

S
364.6
J8c
c.1

PLEASE RETURN

MONTANA JUSTICE PROJECT

MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

STATE DOCUMENTS

OCT 26 1976

CORRECTIONS REPORT

Task Force Report to the Council on
Criminal Justice Standards and Goals





Chairman

Hank Burgess

TASK FORCE ON CORRECTIONS

Members

Gordon Bennett, District Judge	Helena
Roger Crist, Prison Warden	Deer Lodge
Richard Donovan, Deputy Sheriff	Great Falls
Matt Himsl, State Senator	Kalispell
Don Holladay, Supt. Pine Hills School	Miles City
Rae Kalbfleisch, Attorney At Law	Shelby
Charles McCarthy, Director, Youth Development Bureau	Helena
Roland McCauley, Administrator, Corrections Division ..	Helena
Pat Melby, Dir. of Social and Rehab. Serv.	Helena
Bobby Miles, Exec. Scty., Board of Pardons	Helena
Pat Reuss, Citizen Representative	Helena
John Thomas, Mgr., Data and Information Systems	Helena
Richard Vandiver, Professor, University of Montana	Missoula
Jack Williams, Chief of Police	Helena
Joe Yellowrobe, Coord., Dept. of Community Affairs	Havre
Irvin Zeitner, Juvenile Probation Officer	Miles City

Alternates

Al Brockway, Asistant Chief of Police	Helena
George M. Cuff, Acting Chief, Bureau of Probation and Parole	Helena
Bob McNally, Warden's Administrative Assistant ..	Deer Lodge
Mike Strouf, Rehabilitation Counselor, Pine Hills School for Boys	Miles City
Norma Tirrell, Citizen Representative	Helena

Coordinator

Paul N. Spengler

MONTANA JUSTICE PROJECT

MONTANA
COUNCIL
ON
CRIMINAL
JUSTICE
STANDARDS
AND
GOALS

CHAIRMAN
MICHAEL GREELY

VICE CHAIRMAN
GLADYS ELISON

MEMBERS

DON ANDERSON	WINN DOWLIN
JACK ANDERSON	GERALD DUNBAR
GORDON BENNETT	JOHN HARRISON
DONALD BJERTNESS	PAUL HATFIELD
EUGENE BOND	CRANSTON HAWLEY
HENRY BURGESS	DON HOLLADAY
THOMAS BUDEWITZ	JEREMIAH JOHNSON
JEROME CATE	H. E. KORBER
CALVIN CHRISTIAN	JOHN KRSUL
LELAND CHRISTOPHERSON	ROBERT O'LEARY
KEITH CLAWSON	JOHN PFAFF
ALFRED COATE	P. E. PERES
WILLIAM CODER	JOHN THOMAS
ROGER CRIST	PAT WATKINS
ROBERT DESCHAMPS III	

STAFF

PROJECT DIRECTOR

BRINTON B. MARKLE

ASSISTANT PROJECT DIRECTOR

CHARLES M. O'REILLY

SECRETARIES

LOYCE DYE
KAREN SEDLOCK

INFORMATION OFFICER

BILL YAEGER

THANK YOU, STAN!

THE PAGES OF THIS REPORT HAVE BEEN MADE MORE INTERESTING BY THE ADDITION OF ILLUSTRATIONS DRAWN BY A DISTINGUISHED MONTANAN, MR. STAN LYNDE OF RED LODGE. HE HAS BROUGHT MUCH CREDIT TO HIS STATE THROUGH HIS WORK, WHICH IS UNIQUE IN ITS USE OF A FRONTIER MONTANA SETTING TO MAKE IMPORTANT SOCIAL COMMENT ON ISSUES OF THIS DAY. THE MONTANA JUSTICE PROJECT IS DEEPLY GRATEFUL TO MR. LYNDE AND TO THE CHICAGO TRIBUNE - N.Y. NEWS SYNDICATE, INC., FOR THEIR INTEREST IN IMPROVING OUR STATE'S CRIMINAL JUSTICE SYSTEM AND FOR THEIR PERMISSION TO USE CHARACTERS FROM THE COMIC STRIP RICK O'SHAY. COPYRIGHT 1976. ALL RIGHTS RESERVED.

STAFF NOTE

To briefly acquaint you with the organization of the Montana Justice Project the following digest is provided:

Governor Thomas L. Judge appointed the Montana Council on Criminal Justice Standards and Goals to adopt a set of standards and goals for the improvement of Montana's criminal justice system in October, 1974. Five task forces (Law Enforcement, Courts, Corrections, Information Systems and Community Crime Prevention) were set up by the Council to research and draft standards and goals for review and adoption by the council. In reading through this report, you will notice the words "ADOPTED", "AMENDED" or "REJECTED" in use throughout. These words are descriptive of the action taken by the council on the proposed task force standards. Only those stamped "adopted" are official standards and goals for the state of Montana.

In cases where only minor wording changes were made for clarification, etc., said changes were incorporated into the task force standard with the explanation of the change stated under "Council Action."

In cases where major substantive revisions were needed, or where standards were rejected due to conflicts, unacceptable wording, etc., the council rewrote the standard to keep its primary intent and inserted it into the task force report at the appropriate point.

You will find these rewritten standards on different colored pages in this report. In these instances the original task force standard was kept intact so that you may note the differences.

We hope that you will find this report a valuable resource for the improvement of Montana's criminal justice system and would urge you to become familiar with the other four task force reports and in particular the council's report to the governor.

Brinton B. Markle

July, 1976

TABLE OF CONTENTS

CHAPTER 1 - LEGISLATION -----	3
STANDARDS	
1.1 Policy of Corrections -----	5
1.2 Unifying Correctional Programs -----	7
1.3 Commitment Legislation -----	9
1.4 Juvenile Status Offenders -----	11
RECOMMENDATION	
1-A Comprehensive Correctional Legislation -----	13
CHAPTER II - RIGHTS OF OFFENDERS -----	17
STANDARDS	
2.1 Access to Courts -----	21
2.2 Access to Legal Services -----	23
COUNCIL ACTION	
2.2 Access to Legal Services -----	25
STANDARDS	
2.3 Access to Legal Materials -----	27
2.4 Protection Against Personal Abuse -----	29
2.5 Healthful Surroundings -----	31
2.6 Medical Care -----	33
2.7 Searches -----	35
2.8 Equal Treatment -----	37
2.9 Rehabilitation -----	39
2.10 Retention and Restoration of Rights -----	41
COUNCIL ACTION	
2.10 Retention and Restoration of Rights -----	43
STANDARDS	
2.11 Rules of Conduct -----	45
2.12 Disciplinary Procedures -----	47
2.13 Juvenile Disciplinary Procedures -----	49
2.14 Procedures for Nondisciplinary Changes in Status -----	51
2.15 Grievance Procedure -----	53
2.16 Free Expression and Association -----	55
2.17 Exercise of Religious Beliefs and Practices ----	57
2.18 Access to the Public -----	59
2.19 Remedies for Violation of an Offender's Rights -	61
CHAPTER III - DIVERSION -----	65
STANDARDS	
3.1 Use of Diversion -----	71
3.2 Decisionmaking in Individual Cases -----	73
3.3 Role of Police in Juvenile Intake and Detention	75

COUNCIL ACTION	
3.3 Role of Police in Juvenile Intake and Detention -----	77
CHAPTER IV - PRETRIAL RELEASE AND DETENTION -----	81
STANDARDS	
4.1 Construction Policy for Pretrial Detention Facilities	83
4.2 Alternatives to Pretrial Detention -----	85
4.3 Persons Unfit to Proceed with Trial -----	87
4.4 Incompetency Examination -----	89
4.5 Expediting Criminal Trials -----	91
RECOMMENDATIONS	
4-A Pretrial Detention Process Planning -----	93
4-B Procedures Relating to Pretrial Release and Detention Decisions -----	95
4-C Rights of Pretrial Detainees -----	97
4-D Programs for Pretrial Detainees -----	99
CHAPTER V - SENTENCING -----	103
STANDARDS	
5.1 Sentencing the Nondangerous Offender -----	109
5.2 Sentencing to Extended Terms -----	113
5.3 Probation -----	115
5.4 Fines -----	117
5.5 Multiple Sentencing -----	119
5.6 Credit for Time Served -----	121
5.7 Judicial Visits to Institutions -----	123
5.8 Sentencing Institutes -----	125
5.9 Presentence Report -----	127
5.10 Disclosure of Presentence Report -----	129
5.11 Sentencing Hearing - Rights of Defendant -----	131
5.12 Imposition of Sentence -----	133
CHAPTER VI - CLASSIFICATION OF OFFENDERS -----	137
STANDARDS	
6.1 Classification of Offenders -----	139
6.2 Classification for Inmate Management -----	141
6.3 Community Classification Teams -----	143
COUNCIL ACTION	
6.3 Community Classification Teams -----	145
CHAPTER VII - COMMUNITY CORRECTIONS -----	149
STANDARDS	
7.1 Development Plan for Community Based Alternatives to Confinement -----	153
7.2 Inmate Involvement in Community Programs -----	155

COUNCIL ACTION	
7.2	Inmate Involvement in Community Programs ----- 157
STANDARDS	
7.3	Public Information ----- 159
RECOMMENDATIONS	
7-A	Marshaling and Coordinating Community Resources ----- 161
7-B	Correction's Responsibility for Citizen Involvement -- 163
CHAPTER VIII - JAILS AND COMMUNITY CORRECTIONAL CENTERS -----	167
STANDARDS	
8.1	Total System Planning ----- 171
8.2	State Inspection of Local Facilities ----- 173
8.3	Pretrial Detention Admission Process ----- 175
8.4	Staffing ----- 177
8.5	Jail Release Programs ----- 179
8.6	Local Facility Evaluation and Planning ----- 181
RECOMMENDATIONS	
8-A	State Coordination of Local Institutions ----- 183
8-B	Adult Intake Services ----- 185
CHAPTER IX - PROBATION -----	189
STANDARDS	
9.1	Organization of Adult Probation Services ----- 193
9.2	Services to Probationers ----- 195
9.3	Misdemeanant Probation ----- 197
CHAPTER X - MAJOR INSTITUTIONS -----	201
STANDARDS	
10.1	Planning New Correctional Institutions ----- 205
10.2	Modification of Existing Institutions ----- 207
10.3	Special Offender Types ----- 209
10.4	Religious Programs ----- 211
10.5	Recreation Programs ----- 213
10.6	Counseling Programs ----- 215
10.7	Incarcerated Women ----- 217
RECOMMENDATIONS	
10-A	Social Environment of Institutions ----- 219
10-B	Educational and Vocational Training ----- 221
10-C	Correctional Programming and Policies ----- 223
CHAPTER XI - PAROLE -----	227
STANDARDS	
11.1	Parole Authority Personnel ----- 231

COUNCIL ACTION	
11.1 Parole Authority Personnel -----	233
STANDARDS	
11.2 The Parole Grant Hearing -----	235
11.3 Parole Revocation Hearings -----	237
COUNCIL ACTION	
11.3 Parole Revocation Hearings -----	239
STANDARDS	
11.4 Community Services for Parolees -----	241
11.5 Measures of Control -----	243
11.6 Manpower for Parole -----	245
RECOMMENDATION	
11-A Organization of Paroling Authorities -----	247
CHAPTER XII - ORGANIZATION AND ADMINISTRATION -----	251
STANDARD	
12.1 Professional Correctional Management -----	253
RECOMMENDATIONS	
12-A Planning and Organizing -----	255
12-B Employee-Management Relations -----	257
12-C Work Stoppages and Job Actions -----	259
CHAPTER XIII - MANPOWER -----	263
STANDARDS	
13.1 Recruitment from Minority Groups -----	267
13.2 Employment of Women -----	269
13.3 Employment of Ex-offenders -----	271
13.4 Utilization of Volunteers -----	273
13.5 Personnel Practices -----	275
13.6 Criminal Justice Education -----	277
13.7 Intern and Work-Study Programs -----	279
13.8 Training -----	281
RECOMMENDATIONS	
13-A Participatory Management -----	283
13-B Recruiting and Retaining Professional Personnel -----	285
CHAPTER XIV - RESEARCH AND DEVELOPMENT -----	289
STANDARDS	
14.1 Definition of Recidivism -----	291
14.2 Evaluating the Performance of the Corrections System -	293
RECOMMENDATIONS	
14-A Development of a Correctional Data Base -----	295

COUNCIL ACTION RE: MINORITY REPORT ----- 299

ADDENDUM MINORITY REPORT ----- 301

PREFACE

The Corrections Task Force was fortunate to have a wide representation from juvenile and adult corrections, the courts, law enforcement and the public. This eclectic composition imparted a broad realism to the committee's deliberations. The 17 monthly meetings accounted for the most comprehensive review of corrections ever undertaken in Montana. Our overall objective was to improve and modernize the state's correctional programs and institutions, and place them into an integrated and complete system. We adopted as our work plan the 129 standards in the National Advisory Commission (NAC) Report on Corrections. Each standard was thoroughly reviewed two or three times to adopt the best standards for Montana. Standards were revised or deleted, as the task force sought to solve Montana's problems and fulfill its correctional needs. A standard is defined as a specific level of excellence used to compare the quality of a process or performance. It is the strongest possible statement the task force could make about a topic. A recommendation differs from a standard, in that it merely suggests that specific level of excellence. It therefore does not have the strength or impact of a standard.

This report deals with a controversial area. Contrary to an apparent public demand for harsher penalties, the thrust of the report's 106 standards and recommendations is the

reintegration of the offender into the community. The Montana Justice Project received over 100 calls and letters from citizens, most of whom demanded more punitive measures for criminals. A 1975 Board of Crime Control public survey revealed that 64% favored punishment of repeat offenders. The theory behind punishment is that it deters others from committing crimes, or that the criminal is made so uncomfortable that he will not break the law again.

But the task force believes that diversified programs for the offender's reintegration into the community lend themselves more to crime reduction than does punishment. For more on this, see the first standard in the report, "The Policy of Corrections." The task force had two major concerns: (1) Public safety and protection from offenders who are a serious threat to society, and (2) Firm, but humane threatment of offenders.

Punishment is a paradox. It appears that even the threat of it is effective on those who need it the least, yet the most severe affliction of punishment works little, if at all, on those who most merit it. Offenders are sentenced to prison as punishment, not for punishment. If nothing else, punishment serves as a catharsis for the community, because people feel better after the guilty are punished. But to punish strictly in the name of deterrence may not be entirely effective, in light of the evidence. Attorneys

Ronald Goldfarb and Linda Singer, in their encyclopedic review of the corrections system, After Conviction, state that "There is no relation between the sentencing practices in various states and the amount of reported crime in those states."

Common sense would seem to dictate otherwise, that punishment would effect deterrence (both of the offender from repeating his crime, and others from committing the same offense); but unfortunately, A does not seem to follow B in the case of punishment. Perhaps uncommon sense is what we need -- new methods of dealing with offenders -- not because we are bleeding hearts, but simply because the old ways have not worked. New methods, that stand up under close scrutiny and evaluation, demand cold objectivity if they are to be effective. Chapter 14, "Research and Development" deals with the evaluation of corrections.

For those who cry for more criminals to be imprisoned for longer periods of time, I would call their attention to the South. Their prison populations are consistently higher than those of the North. A 1973 prison survey shows that southern prisons have far more offenders in prison, per 100,000 civilian population, than the North. The only northern state with more than 100 prisoners per 100,000 civilian capita was Nevada, with 135.¹ Yet all states in the Deep South, except Mississippi and Arkansas, had over 100 prisoners per 100,000 civilians.² The higher prisoner populations were in North

Carolina (183) and Goergia (173) per 100,000 free people; in comparison, Montana's was 44.³ Indeed, the glut of prisoners has increased today, as Georgia's corrections commissioner announced in 1975 that the state's 37 correctional facilities could not receive any more new inmates.⁴ Florida's prison population has doubled in the past ten years.⁵

But interestingly enough, the 1974 Uniform Crime Reports of the Federal Bureau of Investigation reveal that total crime in the South rose by 21.5% from 1973 to 1974.⁶ New England, with the lowest prisoner ratio,⁷ experienced a 16% total crime increase.⁸ North Dakota, by contrast, which has the lowest (28) prisoner per 100,000 free population in the country, experienced a 5% decrease in total crime from 1973 to 1974.⁹

I am fully aware that this simplistic and selective comparison of prison populations does not scientifically prove that large prison populations do not reduce crime. There are many variables involved, such as demography, the state criminal justice systems, unemployment, standard of living, crime reporting techniques and other factors that could affect the reported crime rates. Another way to view the high inmate populations is that they are a result of the increasing crime rate. With these caveats in mind, I do believe that it is interesting to note that one region of the country, with

relatively larger prisoner populations, fares no better in the war on crime than another area with dramatically lower prison populations.

It is clear that corrections has a different perspective of the offender than does law enforcement. The officer who wrestles an offender to the ground on a dark night certainly has a different outlook on criminals than the corrections official who attempts to return the offender to the community in such a way that he will obey the law. Corrections appreciates the supposition of law enforcement and many citizens that we are "mollycoddling" criminals and are too soft on them. But the success of all task force reports hinges on the willingness of corrections, the courts and law enforcement to communicate and co-operate on all criminal justice concerns. Interdisciplinary seminars and meetings should be useful for law enforcement and corrections to talk to one another and to listen to each other's problems. This should enable different components of the same system to understand each other's roles and problems, which is important if Montana's criminal justice system is to become fully integrated.

Standard 7.3, "Public Information" strongly states that corrections should be accountable to the public and constantly inform them of what is being done and why. The Task Force Findings carries the warning that this standard

is not to be interpreted as a public relations ploy to tell the public what we think they should know. But rather it calls for honesty in reporting failures and problems as well as successes. We believe that a fully-informed public is able to be more understanding and able to make more intelligent decisions about the political leadership they prefer to carry out their correctional policies. And the success of this report, and corrections in Montana, depends upon an informed public.

This report has two chapters which concern the courts -- Chapter 4, "Pretrial Release and Detention" and "Sentencing." Screening offenders in the pretrial phase of the criminal justice system, and sentencing, the beginning of formal corrections, have a direct bearing upon the correctional process by the numbers and kinds of offenders they send into the corrections system. The NAC Corrections Report contains two chapters on the pretrial process and sentencing, and the task force adopted most of the standards with appropriate revisions. We believe these two chapters are relevant to corrections, though they are intended for the courts. They are presented in the spirit of cooperation between two sectors of a system that is becoming increasingly unified.

Chapter 4, "Pretrial Release and Detention," contains Standard 4.2, "Alternatives to Pretrial Detention," which recommends the procedural elimination of the bail bondsman. Eliminating bail would take a constitutional amendment, because bail is

provided by the State Constitution. It is therefore recommended that the court handle the bail bond, in a program similar to the one in Illinois. There the court returns 90% of the offender's 10% bond upon his appearance in court. The other 10% is kept for maintaining the program. Bail tends to discriminate against the poor, and the court bond program is the simplest procedure for making bail available to all.

One of the more controversial standards in the sentencing chapter is 5.1, "Sentencing the Nondangerous, First Offender." It agrees with recommendations by the American Law Institute's Model Penal Code and the Model Sentencing Act of the National Council on Crime and Delinquency, that sentences for most offenders should not exceed five years. The justification for the five year limit on most offenses is that this maximum is sufficient to serve as both retribution for the convicted and deterrence for the would-be felon. Besides, a 1970 survey shows that only 5% of the prisoners discharged in Montana that year served their full sentence, which was over five years.¹⁰ So this standard would not drastically change state sentencing practices. This standard lists nine sentencing alternatives to the judge. Among them is compensation to the victim, which we believe is a worthy and humane practice that should become common in Montana. For more on this, see the Court Task Force Report.

One of the most important standards in the report is Standard 1.4 "Juvenile Status Offenders" which states that the legislature should eliminate "Youth in need of Supervision" from the Youth Court Act. We believe that the social sector is the most appropriate place to deal with the social problems of juveniles such as running away from home, truancy, curfew violations and the catchall category of "incurrigibility."

The juvenile justice system, if for no other reason than limited funds and manpower, should deal only with delinquents. It is these youngsters whose behavior should be brought to the attention of, and dealt with by, the juvenile courts.

In conjunction with the reintegration of the offender into the community, the theme of this report embraces an ancient concept, corrections in the community. The prison is a recent American invention, developed by the reform-minded Quakers in Pennsylvania 200 years ago as a means of dealing less harshly with criminals. At that time torture, branding, the stocks and pillory were common and brutal forms of punishment.

Prior to the prison, earlier societies were forced to deal with their criminal deviants within the community, because there was no where else to send them. This concept is valid today, as more criminal justice agencies throughout the nation turn back to the community for treatment of offenders. We are by no means recommending the abolishment of correctional

institutions in Montana. We believe that they have a proper place in the State's corrections system, because some offenders must be isolated from the community.

But we also believe that the majority of offenders do not pose a substantial threat to society, and can be effectively dealt with in the community, through diversified programs entailing supervision. The community is the place where the criminal behavior occurred, and it should be the community, through corrections, where the behavior is handled. Corrections is an appropriate community function, as people demand increased local, and less state and federal, control. It is far too easy for a community to wash its hands of an offender and send him to the Montana State Prison. The problems that sent him there may remain when he is discharged, and it may be more effective to work with these problems in the community in an effort to help the offender live a law-abiding life. Significantly a 1975 survey revealed that 49% of Montanans favored "some type of local or community correctional responsibility."¹¹ This concept is woven throughout the report, and is covered specifically by the three standards and two recommendations in Chapter 7, "Community Corrections."

This report offers no panacea to corrections on Montana's crime problem. Unfortunately, we know more about the surface of the moon than human behavior. Nothing in this report is

going to solve the dilemma of the repeat offender or prevent the first offender from going astray. It is aimed at a wide range of correctional facilities, from major institutions, jails and community correctional facilities to programs like probation, parole and classification to probably the most important of all, corrections people.

It is our belief that no offender should be subjected to more custody or security than he needs. Certainly, this demands the intelligent prediction of human behavior. Pre-sentence reports (see Standard 5.9) and parole prediction (see Chapter 8 on "Parole") are crucial here.

We are well aware that our report does not have all of the answers. It is the best possible product that we could develop to fit Montana's correctional needs and problems. Sociologist Daniel Glaser, who has devoted his life to research in corrections, has stated:

The highway of correctional history is paved with punctured panaceas -- the perennial prescription of smaller caseloads, more counseling, and other shibboleths. In the 1950's and early 1960's these were accepted as curealls, and prescribed for all offenders. Thanks to research, primarily controlled experiments in California, we now know better. We know that no single policy or service rehabilitates all offenders,---. 12

This is probably the most realistic appraisal of corrections today. About the only thing we can say for sure is that research through quality corrections information should lead

to the development of effective correctional programs. If statistics do not tell us what to do, than at least it will show what programs do not work. Without research and development, corrections is like a rudderless ship that doesn't know where its been or where its going. For this critical component, which is the backbone of corrections, please see Chapter 14 in this report, and the Information Systems Task Force Report, Chapter 4, "Corrections Information Systems."

This report contains an invaluable contribution to corrections in that it supplies a definition of that shop-worn phrase, "recidivism." The "Definition of Recidivism" standard ties down what we mean by that oft-used, but seldom defined, term.

One last word on controversial standards. Chapter 2, "Rights of Offenders" contains 19 standards to implement what is already law and the Constitution in Montana. State statute 95-2227, R.C.M. 1947, "Effect of Conviction," states that offenders shall retain all civil rights except those removed by the sentencing judge. And then these rights may be taken away only for rehabilitation or the protection of society. Article II, Section 28 of the 1972 Montana Constitution, "Rights of the Convicted," mandates what all rights will be returned to the offender upon termination of state supervision.

Many citizens argue that officials are more concerned with the rights of the criminal than those of the victim. But the rights of prisoners is state law and in 1974 the U.S. Supreme Court ruled that though an inmate's rights "may be diminished by the needs and exigencies of the institutional environment, (he) is not wholly stripped of constitutional protections when he is imprisoned for crime."¹³

Change is difficult, and much of this report is aimed at changing the present system. As a 1973 survey of Montana's probation and parole stated, "Corrections in Montana is at the crossroads." And indeed it is. For the first time in its history, corrections is becoming unified into a true system. The Corrections Division of the Department of Institutions controls all correctional facilities and programs, except for juvenile probation. This allows Montana to have an integration of correctional services to deal with the juvenile and adult offenders.

We are confident that the progressive and dedicated professionals in Montana's courts and corrections systems will implement these standards to improve the State's criminal justice system.

My thanks to the hard working and devoted members of the Corrections Task Force who met monthly for 17 months to produce the best possible report for Montana. Task Force meetings

were held from Miles City to Kalispell, and attendance was always excellent, despite the fact that all of the members had full-time jobs. Many hours of homework went into preparation for the meetings, as members reviewed reams of material containing the standards and references.

They gave it their best effort, and I am proud of our report. It demands much in the way of change and new programs and procedures, but I am confident that it will be implemented. The report should be thought of as a target at which to aim. Certainly we shoot for the bullseye when we target practice, and it is this goal that helps us get a respectable score, even if the bullseye is missed.

And so it is with this report. If corrections falls short of its implementation, a conscientious effort to carry it out will cause more progress than ignoring the standards. Some of the standards and recommendations cannot be carried out immediately, but they are something to strive for and to compare with present practice. Administrative inconvenience or cost should not be allowed to interfere with the implementation of the rights and standards enumerated in this report.

Though controversial in places, the report contains the crux of the future for corrections in Montana. We hope that the

Montana Correctional Association will implement it in their work and testify for the proposed legislation in many of the standards. This is the most complete review ever of Montana's corrections system with proposed standards and recommendations, and we strongly recommend its adoption into law and correctional practice to modernize and improve today's system.

REFERENCES

- 1 Law Enforcement Assistance Administration, Prisoners in State and Federal Institutions, (Washington, D.C.: U.S. Government Printing Office, May 1975), p. 8.
- 2 Ibid.
- 3 Ibid.
- 4 "The Prisons Overflow," Time Magazine, November 10, 1975, p. 43.
- 5 Ibid.
- 6 Federal Bureau of Investigation, Uniform Crime Reports, (Washington, D.C.: U.S. Government Printing Office, November 17, 1975), p. 58.
- 7 Prisoners in Institutions, p. 8.
- 8 UCR's, p. 56.
- 9 Prisoners, p. 8.
- 10 National Advisory Commission on Criminal Justice Standards and Goals, Corrections, (Washington, D.C.: U.S. Government Printing Office, 1973), p. 144.
- 11 Montana Board of Crime Control, Consumer Survey Summary, June 25, 1975, p. 3.
- 12 Daniel Glaser, "Achieving Better Questions, A Half Century's Progress in Correctional Research," Federal Probation, September 1957, p. 3.
- 13 Richard L. Worsnop, "Courts Aid Prisoners," Missoulian, February 9, 1976, p. 4.

LEGISLATION

CHAPTER 1 - OVERVIEW

LEGISLATION

Significantly, the first standard in this report is "The Policy of Corrections," which states the mission and goals of corrections. It is important that this policy is published, for the public has the right to know about its corrections system. As one might expect, the first priority of corrections is to protect the public. Confinement should be the last alternative considered, because an offender's correctional program should be the least drastic measure consistent with the offender's needs and public safety. This policy is a common thread throughout the report, and it gives Montana's corrections system a common goal and sense of mission.

For the first time in its history, Montana has a unified corrections system with the creation of the Corrections Division in January 1976. This division of the Department of Institutions is responsible for all state correctional institutions and programs (the exceptions are jails and juvenile probation). Standard 1.2, "Unifying Correctional Programs" is an important standard in the report, because it ties together all facets of the state corrections system and puts it into one complete package.

The task force believes that youth in need of supervision (status offenders) are a social problem and should be accommodated by the Department of Social Rehabilitation Services,

rather than the juvenile justice system. If the troubled youth in Montana can be served effectively, then there might be less of a need for the correctional system.

THE POLICY OF CORRECTIONS

ADOPTED

TASK FORCE FINDINGS

A correctional policy is a definitive statement explaining the goals of a corrections system to the public and to professionals in corrections. PROBLEM: Montana has no correctional philosophy. Its value lies in explaining to both groups what to expect, or strive for, in corrections. Montanans have never been told the overall objectives of the state's correctional system, which at times has led to misunderstanding and public bewilderment. The Montana Justice Project's Citizen Response Program received well over 100 statements and opinions from citizens throughout the state. They overwhelmingly called for a harsher approach to corrections, with less offenders on probation and parole and more locked up. Although it may be controversial, the task force believes that diversified programs for the offender's reintegration into the community lend themselves to crime reduction.

STANDARD 1.1

THE POLICY OF CORRECTIONS SHOULD CONTAIN
THE FOLLOWING PREMISES:

1. CORRECTION'S FIRST FUNCTION IS TO PROTECT THE PUBLIC. EFFORTS WILL BE EMPHASIZED THAT ASSURES AN OFFENDER WILL NOT RETURN TO CRIME AFTER RELEASE FROM THE CORRECTIONAL SYSTEM.
2. THE PUBLIC IS PROTECTED BY A CORRECTIONAL SYSTEM CHARACTERIZED BY CONCERN, DIVERSIFIED PROGRAMS FOR INDIVIDUALS AND REINTEGRATION CONCEPTS AS WELL AS PUNITIVE MEASURES.
3. PERSONS ACCUSED OF CRIMINAL CONDUCT OR DELINQUENT BEHAVIOR, AND AWAITING TRIAL, SHOULD BE SUBJECTED TO THE LEAST RESTRAINT. THIS CONDITION SHOULD GIVE REASONABLE ASSURANCE THAT THE ACCUSED WILL APPEAR FOR TRIAL. CONFINEMENT SHOULD BE USED ONLY WHERE NO OTHER MEASURE IS SHOWN TO BE ADEQUATE.
4. AN OFFENDER'S CORRECTIONAL PROGRAM SHOULD BE THE LEAST DRASTIC MEASURE CONSISTENT WITH THE OFFENDER'S NEEDS AND PUBLIC SAFETY. CONFINEMENT, WHICH IS THE MOST DRASTIC DISPOSITION FOR AN OFFENDER AND THE MOST EXPENSIVE FOR THE PUBLIC, SHOULD BE THE LAST ALTERNATIVE CONSIDERED.

IMPLEMENTATION

1. To be submitted by the Corrections Division to the 1977 legislature.
2. The legislature should state this policy as a preface to a correctional code, as stated in Recommendation 1-A.
3. The Corrections Division should publicize this policy in conjunction with Standard 7.5, "Public Information."

COUNCIL ACTION: Adopted as written.

UNIFYING CORRECTIONAL PROGRAMS

AMENDED
ADOPTEDTASK FORCE FINDINGS

As stated in the 1973 survey of Montana's probation and parole system, "Montana has a nonsystem of corrections."¹ This has been corrected, in part, with the birth of the Corrections Division on January 1, 1976. To begin properly, this division should be given the responsibility and authority to run the entire state correctional system, except for juvenile probation, which remains under the district courts.

STANDARD 1.2

ALL STATE CORRECTIONAL FACILITIES AND PROGRAMS SHOULD BE UNIFIED. THE BOARD OF PARDONS MAY BE ADMINISTRATIVELY PART OF THE CORRECTIONS DIVISION, BUT IT SHOULD REMAIN AUTONOMOUS IN ITS DECISIONMAKING AUTHORITY AND SEPARATE FROM FIELD SERVICES. PROGRAMS FOR ADULT, JUVENILE AND YOUTHFUL OFFENDERS THAT SHOULD BE WITHIN THE CORRECTIONS DIVISION INCLUDE:

1. SERVICES FOR PERSONS AWAITING TRIAL.
2. ADULT PROBATION SUPERVISION.
3. INSTITUTIONAL CONFINEMENT.
4. COMMUNITY-BASED PROGRAMS, WHETHER PRIOR TO OR DURING INSTITUTIONAL CONFINEMENT.
5. PAROLE AND AFTERCARE.
6. ALL PROGRAMS FOR MISDEMEANANTS INCLUDING ADULT PROBATION, CONFINEMENT, COMMUNITY-BASED PROGRAMS AND PAROLE.

THE LEGISLATURE SHOULD AUTHORIZE THE CORRECTIONAL AGENCY TO PERFORM THE FOLLOWING FUNCTIONS:

1. PLANNING OF DIVERSE CORRECTIONAL FACILITIES.
2. DEVELOPMENT AND IMPLEMENTATION OF TRAINING PROGRAMS FOR CORRECTIONAL PERSONNEL.
3. DEVELOPMENT AND IMPLEMENTATION OF AN INFORMATION-GATHERING AND RESEARCH SYSTEM.
4. EVALUATION OF THE EFFECTIVENESS OF ITS FUNCTIONS.
5. PERIODIC REPORTING TO GOVERNMENTAL OFFICIALS INCLUDING THE LEGISLATURE AND EXECUTIVE BRANCH.
6. DEVELOPMENT AND IMPLEMENTATION OF CORRECTIONAL PROGRAMS THAT WILL BENEFIT OFFENDERS.
7. CONTRACTS FOR THE USE OF NONDEPARTMENTAL AND PRIVATE RESOURCES IN CORRECTIONAL PROGRAMMING.

IMPLEMENTATION

To be implemented by the 1977 legislature.

REFERENCE

1. Roland McCauley and Michael E. Madison, Corrections (1973), p.6.

COUNCIL ACTION:

Subsections #2 and #6 were amended by inserting the word "adult". This was done to exclude the juveniles from these portions of the standard in keeping with the Montana Youth Act. The standard was then adopted.

COMMITMENT LEGISLATION

AMENDED
ADOPTEDTASK FORCE FINDINGS

Montana's corrections system has been unified (except for juvenile probation) under the Corrections Division. It controls all correctional institutions and adult probation and parole, and any state community correctional centers will come under this division. This agency should be able to determine which of its facilities or programs are best suited for the individual offender. The establishment of the Montana State Prison Evaluation and Diagnostic Center, with the new Corrections Division, should amount to a new resource capable of bringing people and programs together for better servicing.

STANDARD 1.3

MONTANA SHOULD ENACT LEGISLATION GOVERNING THE COMMITMENT, CLASSIFICATION, AND TRANSFER OF FELONY OFFENDERS SENTENCED TO CONFINEMENT. SUCH LEGISLATION SHOULD INCLUDE:

1. PROVISION REQUIRING THAT OFFENDERS SENTENCED TO CONFINEMENT BE SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF INSTITUTIONS RATHER THAN TO ANY SPECIFIC INSTITUTION.
2. REQUIREMENT THAT SUFFICIENT INFORMATION BE DEVELOPED ABOUT AN INDIVIDUAL OFFENDER AND THAT ASSIGNMENT TO FACILITY, PROGRAM, AND OTHER DECISIONS AFFECTING THE OFFENDER BE BASED ON SUCH INFORMATION.
3. AUTHORIZATION FOR THE ASSIGNMENT OR TRANSFER OF OFFENDERS TO FACILITIES OR PROGRAMS ADMINISTERED BY THE DEPARTMENT OF INSTITUTIONS, LOCAL SUBDIVISIONS OF GOVERNMENT, THE FEDERAL GOVERNMENT, OTHER STATES, OR PRIVATE INDIVIDUALS OR ORGANIZATIONS.
4. AUTHORIZATION FOR THE TRANSFER OF OFFENDERS IN NEED OF SPECIALIZED TREATMENT TO INSTITUTIONS THAT CAN PROVIDE IT. THIS SHOULD INCLUDE OFFENDERS SUFFERING FROM PHYSICAL DEFECTS OR DISEASE, MENTAL PROBLEMS, NARCOTIC ADDICTION, OR ALCOHOLISM, CONSISTENT WITH APPLICABLE LAW.
5. PROVISION REQUIRING THAT THE DECISION TO ASSIGN AN OFFENDER TO A PARTICULAR FACILITY OR PROGRAM SHALL NOT IN AND OF ITSELF AFFECT THE OFFENDER'S ELIGIBILITY FOR PAROLE OR LENGTH OF SENTENCE.

6. A REQUIREMENT THAT THE DEPARTMENT OF INSTITUTIONS DEVELOP THROUGH RULES AND REGULATIONS:
 - a. CRITERIA FOR THE ASSIGNMENT OF AN OFFENDER TO A PARTICULAR FACILITY AND
 - b. A PROCEDURE ALLOWING THE OFFENDER TO PARTICIPATE IN, AND SEEK ADMINISTRATIVE REVIEW OF, DECISIONS AFFECTING HIS ASSIGNMENT OR TRANSFER TO A PARTICULAR FACILITY OR PROGRAM.
7. TRANSFER TO THE MONTANA STATE HOSPITAL MAY BE MADE ON EMERGENCY FOR ONLY FIVE DAYS, PRIOR TO DUE PROCESS HEARING IN DISTRICT COURT. (THIS APPLIES TO JUVENILES AND ADULTS).

COUNCIL ACTION:

The word "felony" was inserted into the first sentence for the purpose of clarity. The standard was then adopted.

JUVENILE STATUS OFFENDERS

ADOPTED

TASK FORCE FINDINGS

Status offenders (called youth in need of supervision by the Montana Youth Court Act) are juveniles (under 18 years of age) who commit certain acts prohibited by law, such as truancy, incorrigibility or running away from home. If these acts were committed by an adult, they would not be crimes. It is the intent of the task force to prevent these troubled youth from continuing in the juvenile justice system by providing services to overcome the youth's familial and social problems.

STANDARD 1.4

MONTANA SHOULD HAVE AN ADEQUATELY FUNDED COMPREHENSIVE PROGRAM FOR HANDLING STATUS OFFENDERS UNDER ONE DESIGNATED AGENCY OUTSIDE THE JUVENILE JUSTICE SYSTEM.

IMPLEMENTATION

The Department of Social and Rehabilitation Services should be designated and funded to develop this program.

COUNCIL ACTION:

The Council adopted this standard for its report with the exception of the Implementation section. They felt other agencies could be found that could perform this function.

COMPREHENSIVE CORRECTIONAL LEGISLATION

ADOPTED

TASK FORCE FINDINGS

Montana has a hodgepodge of correctional law interspersed amongst other statutes. This is confusing, making it difficult to research statutes concerning corrections. A correctional code would facilitate the modernization of obsolete laws. PROBLEM: Montana has no comprehensive correctional legislative code which would create a definitive purpose to the state's corrections system.

RECOMMENDATION 1-A

MONTANA SHOULD ENACT A COMPREHENSIVE CORRECTIONAL CODE. IT SHOULD INCLUDE STATUTES COVERING:

1. SERVICES FOR PERSONS AWAITING TRIAL.
2. SENTENCING CRITERIA, ALTERNATIVES AND PROCEDURES.
3. PROBATION AND OTHER PROGRAMS SHORT OF INSTITUTIONAL CONFINEMENT.
4. INSTITUTIONAL PROGRAMS.
5. COMMUNITY-BASED PROGRAMS.
6. PAROLE.
7. PARDON.

THE CODE SHOULD INCLUDE STATUTES ON THESE PROGRAMS FOR:

1. FELONS, MISDEMEANANTS AND DELINQUENTS.
2. ADULTS, JUVENILES AND YOUTHFUL OFFENDERS.
3. MALE AND FEMALE OFFENDERS.

IMPLEMENTATION

The Corrections Division and the Legislative Council should draft a correctional code for presentation to the legislature.

COUNCIL ACTION: Adopted as written.

RIGHTS OF OFFENDERS



CHAPTER 2 - OVERVIEW

RIGHTS OF OFFENDERS

TO INSURE THE RIGHTS OF OFFENDERS THROUGH EQUITY AND JUSTICE IN CORRECTIONS IN ACCORDANCE WITH THE 1972 MONTANA CONSTITUTION AND THE REVISED CODES OF MONTANA.

The standards on the rights of offenders, adopted by the Corrections Task Force, recognize the recent court decisions concerning corrections.¹ Practically speaking, most of the standards in this chapter implement Montana's Constitution and law. Montana's 1972 Constitution, Article II, Section 28, states that "Full rights are restored by termination of state supervision for any offense against the state."

Concerning rights of the convicted, 95-2227, R.C.M. 1947, "Effect of Conviction," states:

1. "Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.
2. "No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.
3. "When a person has been deprived of any of his civil or constitutional rights by reason of

conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred."

The proliferation of recent case law on the rights of offenders illustrates the need for Montana's correctional administrators to respond to the law in order to prevent judicial intervention. The question, then, "Should offenders have rights?" becomes a moot point if the courts state that they shall have rights, and then back it up with a court order.

Back in 1891, few rights were in evidence. The prison rules for that year read, "No prisoner will be allowed to approach nearer than 15 paces to an armed guard before making his wants known, and touching his hat as he approaches."²

Current rules for inmate conduct are far less restrictive than in the 19th century. Then, when prisoners needed anything during meals or at work, "they are to signify by holding up one cup or hand."³ In contrast to this rather harsh rule (by today's standards), Standard 2.11, "Rules of Conduct," recommends that the least drastic means be used to achieve the important interests of a correctional facility. Clearly, corrections is far different than it was in the last century.

As corrections has moved from punishment to rehabilitative efforts, it is correctional practice to uphold offender's rights. It is of the utmost importance to enumerate

specifically how a right should be granted. Standards may be ineffective simply because they do not say enough to cover all of the occasions in which they might apply. For instance, not only does Standard 2.1 state that an offender should have access to the courts, but it goes on to show how access is gained and under what circumstances. Adoption of these standards should help correctional administrators to carry out their duties and responsibilities more effectively. For example, Standard 2.18, "Access to the Public," clearly states that the media may not be allowed into an institution during a disorder. This recognizes that order and security are not to be flagrantly jeopardized.

These standards are so important that the legislature should immediately enact a code of offenders' rights. This code should define the substantive rights of offenders, and clear up problems and questions as to their rights.

It is strongly recommended that a code be enacted into law, which should be governed by the following principles:

1. Offenders should be entitled to the same rights as free citizens except where the nature of confinement (custody and security) necessarily requires modification.
2. Where modification of the rights of offenders is required by the nature of custody, such modification should be as limited as possible.
3. Such legislation should implement the substantive rights more fully described in this chapter.

4. Such legislation should provide adequate means for enforcement of the rights so defined. It should authorize the remedies for violations of the rights of offenders listed in Standard 2.19, where they do not already exist.

This chapter has been written for all offenders who are in a correctional status - males and females, adults and juveniles, pretrial detainees and convicted offenders, probationers and parolees. Cost and manpower are factors in implementation, but the following standards carry out Montana's Constitution and law, rather than introduce an entirely new concept and foreign element to Montana's corrections system.

See the minority report in the addendum for two more standards on "Rights."

REFERENCES

1. For an encyclopedic overview of these court decisions see the South Carolina Department of Corrections, The Emerging Rights of the Confined (Columbia, S.C., The State Printing Co., 1972) and Chap. 7, "Redressing Prisoners' Grievances" of Ronald L. Goldfarb's and Linda R. Singer's, After Conviction (New York: Simon and Schuster, 1973).
2. Rules and Regulations for the Government of the Montana State Prison (1891), Rule 111.
3. Ibid.

ACCESS TO COURTS

ADOPTED

TASK FORCE FINDINGS

Article II, Section 16 of Montana's 1972 Constitution states that: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, . . ." The following standard implements this right.

STANDARD 2.1

OFFENDERS UNDER CORRECTIONAL CONTROL SHOULD HAVE ACCESS TO THE COURTS. THEY SHOULD BE ABLE TO:

1. CHALLENGE THE LEGALITY OF THEIR CONVICTION OR CONFINEMENT.
2. SEEK A REMEDY FOR UNLAWFUL TREATMENT OR VIOLATION OF RIGHTS WHILE INCARCERATED OR UNDER CORRECTIONAL CONTROL.
3. SEEK RELIEF FROM CIVIL LEGAL PROBLEMS.

AN INMATE SHOULD NOT HAVE TO WAIT FOR DISCHARGE FOR ACCESS TO THE COURTS. OFFENDERS MAY BE REQUIRED TO FIRST FILE COMPLAINTS THROUGH NORMAL ADMINISTRATIVE CHANNELS. IF NO RELIEF IS GRANTED WITHIN 30 DAYS, THEN THEY MAY SEEK REDRESS FROM THE COURTS.

CONVENIENT ACCESS TO THE COURTS INCLUDES THE USE OF LETTERS TO JUDGES AND COURT OFFICIALS, AS WELL AS THE RIGHT TO FILE SUITS AND COURT ACTIONS. THEY SHOULD NOT BE PUNISHED FOR SO DOING.

TRANSPORTATION TO, AND ATTENDANCE AT COURT HEARINGS MAY BE SUBJECT TO REASONABLE REQUIREMENTS OF CORRECTIONAL SECURITY, SCHEDULING AND NEED AS DETERMINED BY THE COURTS. COURTS MAY ORDER OFFENDERS TO BE TRANSPORTED.

IMPLEMENTATION

The Corrections Division should insure that all offenders under its supervision may have access to a court, if necessary.

COUNCIL ACTION: Adopted as written.

ACCESS TO LEGAL SERVICES

AMENDED
ADOPTEDTASK FORCE FINDINGS

Case law is replete with court decisions establishing the right of post-conviction access to an attorney. Even lay legal advisors are acceptable when reasonable alternatives are not available.¹ Some services are being provided by law school students to assist inmates with major legal problems concerning their conviction and confinement.

STANDARD 2.2

AN INCARCERATED OFFENDER SHOULD HAVE A RIGHT TO COUNSEL TO SEEK POST-CONVICTION RELIEF OR IF CHARGED WITH A CRIME OTHER THAN THAT FOR WHICH SENTENCE WAS PASSED.

1. THIS STANDARD APPLIES TO THE FOLLOWING:
 - a. POST CONVICTION PROCEEDINGS TESTING THE LEGALITY OF CONVICTION OR CONFINEMENT.
 - b. A CHALLENGE TO THE CONDITIONS OF TREATMENT UNDER CONFINEMENT OR OTHER CORRECTIONAL CONTROL.
 - c. PROBATION REVOCATION AND PAROLE GRANT AND REVOCATION PROCEEDINGS.
 - d. DISCIPLINARY PROCEEDINGS IN A CORRECTIONAL FACILITY THAT IMPOSE MAJOR PENALTIES AND DEPRIVATIONS. THIS SHOULD INCLUDE LOSS OF "GOOD TIME," ASSIGNMENT TO ISOLATION STATUS, TRANSFER TO ANOTHER INSTITUTION OR A HIGHER CUSTODY STATUS. A FINE OR FORFEITURE OF INMATE EARNINGS AND DISCIPLINARY RECLASSIFICATION ACTIONS ARE ALSO INCLUDED.
 - e. CIVIL AND LEGAL PROBLEMS RELATING TO DEBTS, MARITAL STATUS, PROPERTY OR OTHER PERSONAL AFFAIRS OF THE OFFENDER.
2. IN THE EXERCISE OF THESE RIGHTS:
 - a. ATTORNEYS SHOULD BE REQUIRED FOR THE ABOVE MATTERS. LAW STUDENTS MAY REPRESENT OFFENDERS IN POST-CONVICTION PETITIONS.
 - b. COUNSEL SUBSTITUTES (LAW STUDENTS, CORRECTIONAL STAFF, INMATE PARAPROFESSIONAL OR OTHER TRAINED PARALEGAL PERSONS) MAY ASSIST ATTORNEYS.

- c. OFFENDERS MAY BE REPRESENTED BY COUNSEL SUBSTITUTES FOR MATTERS 1c AND 1d IF THEY HAVE BEEN TRAINED BY QUALIFIED ATTORNEYS OR A LAW SCHOOL, WITH CONTINUED SUPERVISION BY THE ATTORNEY.
- d. HELP FROM OTHER INMATES SHOULD BE PROHIBITED ONLY IF LEGAL COUNSEL IS REASONABLY AVAILABLE IN THE INSTITUTION.
- e. ACCESS TO THE LEGAL SERVICES IN THIS STANDARD SHOULD APPLY TO ALL JUVENILES IN CORRECTIONS.
- f. CORRECTIONAL AUTHORITIES SHOULD ASSIST INMATES IN MAKING CONFIDENTIAL CONTACT WITH ATTORNEYS AND LAY COUNSEL. THIS ASSISTANCE INCLUDES VISITS DURING NORMAL INSTITUTIONAL HOURS, UNCENSORED MAIL AND TELEPHONE CALLS. SPECIAL CONSIDERATION SHOULD BE GIVEN FOR AFTER-HOUR VISITS WHERE REQUESTED FOR SPECIAL OCCASIONS.

IMPLEMENTATION

- 1. The Corrections Division and applicable law enforcement agencies should implement this standard.
- 2. Appropriate legal defense should be appointed to represent inmates at the prison at Swan River Youth Forest Camp in post-conviction and criminal cases for the indigent.
- 3. Legal Services should handle all civil matters for the indigent.

REFERENCES

- 1. Johnson V. Avery, 393 U.S. 483 (1969).

COUNCIL ACTION:

This standard was amended by deleting the last 2 sentences of 1.d. which the council felt were redundant. The standard was then adopted. See colored insert on next page.

COUNCIL ACTION

ADOPTED VERSION STANDARD 2.2

STANDARD 2.2

AN INCARCERATED OFFENDER SHOULD HAVE A RIGHT TO COUNSEL TO SEEK POST-CONVICTION RELIEF OR IF CHARGED WITH A CRIME OTHER THAN THAT FOR WHICH SENTENCE WAS PASSED.

1. THIS STANDARD APPLIES TO THE FOLLOWING:
 - a. POST CONVICTION PROCEEDINGS TESTING THE LEGALITY OF CONVICTION OR CONFINEMENT.
 - b. A CHALLENGE TO THE CONDITIONS OF TREATMENT UNDER CONFINEMENT OR OTHER CORRECTIONAL CONTROL.
 - c. PROBATION REVOCATION AND PAROLE GRANT AND REVOCATION PROCEEDINGS.
 - d. DISCIPLINARY PROCEEDINGS IN A CORRECTIONAL FACILITY THAT IMPOSE MAJOR PENALTIES AND DEPRIVATIONS.
 - e. CIVIL LEGAL PROBLEMS RELATING TO DEBTS, MARITAL STATUS, PROPERTY OR OTHER PERSONAL AFFAIRS OF THE OFFENDER.
2. IN THE EXERCISE OF THESE RIGHTS:
 - a. ATTORNEYS SHOULD BE REQUIRED FOR THE ABOVE MATTERS. LAW STUDENTS MAY REPRESENT OFFENDERS IN POST-CONVICTION PETITIONS.
 - b. COUNSEL SUBSTITUTES (LAW STUDENTS, CORRECTIONAL STAFF, INMATE PARAPROFESSIONAL OR OTHER TRAINED PARALEGAL PERSONS) MAY ASSIST ATTORNEYS.
 - c. OFFENDERS MAY BE REPRESENTED BY COUNSEL SUBSTITUTES FOR MATTERS 1c AND 1d IF THEY HAVE BEEN TRAINED BY QUALIFIED ATTORNEYS OR A LAW SCHOOL, WITH CONTINUED SUPERVISION BY THE ATTORNEY.
 - d. HELP FROM OTHER INMATES SHOULD BE PROHIBITED ONLY IF LEGAL COUNSEL IS REASONABLY AVAILABLE IN THE INSTITUTION.
 - e. ACCESS TO THE LEGAL SERVICES IN THIS STANDARD SHOULD APPLY TO ALL JUVENILES IN CORRECTIONS.
 - f. CORRECTIONAL AUTHORITIES SHOULD ASSIST INMATES IN MAKING CONFIDENTIAL CONTACT WITH ATTORNEYS AND LAY COUNSEL. THIS ASSISTANCE INCLUDES VISITS DURING NORMAL INSTITUTIONAL HOURS, UNCENSORED MAIL AND TELEPHONE CALLS. SPECIAL CONSIDERATION SHOULD BE GIVEN FOR AFTER-HOUR VISITS WHERE REQUESTED FOR SPECIAL OCCASIONS.

ACCESS TO LEGAL MATERIALS

ADOPTED

TASK FORCE FINDINGS

If offenders are to have access to the courts and legal services, then it follows that they should be entitled to legal materials. It is common practice for prison inmates to file petitions, so a quality law library is both useful and necessary. The prison has a law library, which includes a set of the revised Montana Codes, Black's Law Dictionary, U.S. Codes and various law journals and supplements.

STANDARD 2.3

AN APPROPRIATE LIBRARY SHOULD BE ESTABLISHED AND MAINTAINED AT EACH FACILITY WITH A DESIGN CAPACITY OF 100 OR MORE. OTHER RESIDENTIAL FACILITIES SHOULD ASSURE REASONABLE ACCESS TO AN ADEQUATE LAW LIBRARY. THIS LIBRARY SHOULD INCLUDE:

1. MONTANA'S CONSTITUTION, LAWS AND ALL MATERIAL PERTAINING TO STATE PROCEDURAL RULES AND DECISIONS.
2. FEDERAL CASE LAW.
3. COURT RULES AND PRACTICE.
4. AT LEAST ONE LEGAL PERIODICAL.
5. APPROPRIATE DIGESTS AND INDEXES.

IMPLEMENTATION

1. The Corrections Division should insure that offenders under its supervision have access to legal materials.
2. Applicable local law enforcement agencies should make arrangements for inmates of jails to have reasonable access to legal materials. This means that a reasonable effort should be made to acquire requested law materials. It does not mean that a sheriff must stock a law library or transport an inmate to a judge's chambers or a law library.

COUNCIL ACTION: Adopted as written.

PROTECTION AGAINST PERSONAL ABUSE

ADOPTEDTASK FORCE FINDINGS

The close living conditions imposed upon offenders by incarceration demand that they be protected from abuse by the staff and other inmates. The NAC Corrections report comments that, "Only the correctional authority is in a position to protect inmates, and the need to do so is clear."¹

STANDARD 2.4

OFFENDERS ARE NOT TO BE PERSONALLY ABUSED BY CORRECTIONAL STAFF AND OTHER OFFENDERS. THE FOLLOWING SHOULD BE PROHIBITED:

1. CORPORAL PUNISHMENT.
2. PHYSICAL FORCE BY CORRECTIONAL STAFF, EXCEPT IN THESE INSTANCES:
 - a. SELF-DEFENSE OR TO PROTECT ANOTHER PERSON FROM IMMINENT PHYSICAL ATTACK.
 - b. TO PREVENT A RIOT, ESCAPE OR PROPERTY DAMAGE.
3. SOLITARY OR SEGREGATED CONFINEMENT AS DISCIPLINE OR PUNISHMENT, EXCEPT AS A LAST RESORT. THEN IT SHOULD NOT BE LONGER THAN 10 DAYS.
4. ANY LOSS OF CLOTHING, BED AND BEDDING, LIGHT, VENTILATION, HEAT, EXCEPT UNDER SEVERE THREAT TO PERSONS OR PROPERTY.
5. ANY ACT OR LACK OF CARE, WHETHER BY WILLFUL ACT OR NEGLIGENCE, THAT INJURES OR SIGNIFICANTLY IMPAIRS THE HEALTH OF ANY OFFENDER.
6. INFLICTION OF MENTAL DISTRESS, DEGRADATION OR HUMILIATION.

IMPLEMENTATION

1. The Corrections Division and all applicable law enforcement agencies should immediately implement this standard.
2. Implementation should include:
 - a. The periodic evaluation of staff to identify persons who may constitute a threat to offenders. Persons who are so identified should be reassigned.

- b. The development of institutional classification procedures that identify offenders prone to violence. They should receive greater supervision.
 - c. Implement supervision procedures and other techniques that will provide a reasonable measure of safety for offenders from the attacks of other offenders. Technology, as in closed circuit television, should not be solely relied upon.
3. Legislation is required for correctional agencies to compensate offenders for injuries suffered because of the intentional or negligent acts or omissions of correctional staff. This is subject to the defense of contributory negligence.

REFERENCES

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C., U.S. Government Printing Office, 1973), p. 33.

COUNCIL ACTION: Adopted as written.

HEALTHFUL SURROUNDINGS

ADOPTED

TASK FORCE FINDINGS

The good health of inmates is one of the priorities of correctional institutions. With the majority of Montana's jails in "fair to poor condition,"¹ healthful surroundings become an important issue. It is the lawful responsibility of local government to keep jails in good repair.²

STANDARD 2.5

EACH PERSON IN CUSTODY HAS THE RIGHT TO A HEALTHFUL ENVIRONMENT. AFTER A REASONABLE TIME TO MAKE CHANGES, A RESIDENTIAL FACILITY THAT DOES NOT MEET THE REQUIREMENTS SET FORTH IN MONTANA'S HEALTH AND SANITATION LAWS SHOULD BE CLOSED.

THE FACILITY SHOULD PROVIDE INMATES WITH:

1. A CELL OR ROOM OF ADEQUATE SIZE.
2. COMFORTABLE HEAT OR COOLING APPROPRIATE TO THE SEASON.
3. NATURAL AND ARTIFICIAL LIGHT.
4. CLEAN AND FUNCTIONAL FACILITIES TO MAINTAIN PERSONAL CLEANLINESS.
5. OPPORTUNITIES AND EQUIPMENT FOR RECREATION. WEATHER PERMITTING, RECREATION OR EXERCISE SHOULD BE OUTDOORS.

INDEPENDENT, COMPREHENSIVE SAFETY AND SANITATION INSPECTIONS SHOULD BE DONE ANNUALLY BY THESE QUALIFIED PEOPLE: STATE OR LOCAL INSPECTORS OF FOOD, MEDICAL, HOUSING AND INDUSTRIAL SAFETY WHO ARE INDEPENDENT OF THE CORRECTIONAL AGENCIES. CORRECTIONAL FACILITIES SHOULD BE SUBJECT TO APPLICABLE MONTANA STATUTES AND LOCAL ORDINANCES.

IMPLEMENTATION

1. The administrator of the Corrections Division should insure that all state correctional facilities are maintained according to this standard.
2. All local law enforcement agencies should maintain their jails in compliance with this standard.

3. Appropriate state authorized agencies should conduct inspections and insure compliance with state health laws and laws regarding industrial safety.

REFERENCES

1. State of Montana, Jail Survey (1971), p. 18.
2. 16-2802.1, R.C.M. 1947.

COUNCIL ACTION: Adopted as written.

MEDICAL CARE

AMENDED
ADOPTEDTASK FORCE FINDINGS

Proper medical care is a necessary part of treatment of inmates. It is as basic "as food and shelter are basic."¹ Throughout the nation, the quality of medical treatment afforded prisoners has been the focus of a growing number of law suits.²

STANDARD 2.6

OFFENDERS SHOULD HAVE ADEQUATE MEDICAL CARE. THIS SHOULD INCLUDE SERVICES GUARANTEEING PHYSICAL, MENTAL AND SOCIAL WELL-BEING, AS WELL AS DIAGNOSIS AND TREATMENT FOR SPECIFIC DISEASES, ILLNESSES AND INFIRMITIES. THIS MEDICAL CARE SHOULD BE COMPARABLE IN QUALITY AND AS AVAILABLE AS IT WOULD BE TO THE PUBLIC. THIS CARE SHOULD INCLUDE AT LEAST:

1. A PROMPT EXAMINATION UNDER THE SUPERVISION OF A PHYSICIAN UPON JUDICIAL COMMITMENT TO A STATE CORRECTIONAL FACILITY.
2. MEDICAL SERVICES PERFORMED BY PERSONS WITH APPROPRIATE TRAINING UNDER THE SUPERVISION OF A PHYSICIAN LICENSED BY THE STATE OF MONTANA OR OTHER APPROPRIATE STATE.
3. EMERGENCY MEDICAL TREATMENT ON A 24-HOUR BASIS.
4. ACCESS TO A HOSPITAL.

A LICENSED PHYSICIAN OR PROPERLY TRAINED PERSON SHOULD DECIDE IF AN OFFENDER NEEDS MEDICAL CARE.

MEDICAL RECORDS SHOULD BE KEPT BY THE PHYSICIAN IN CHARGE. THE PRESCRIPTION AND DISPENSING OF MEDICINE SHOULD BE UNDER STRICT MEDICAL SUPERVISION.

IMPLEMENTATION

1. The administrator of the Corrections Division and appropriate local law enforcement agencies should provide adequate medical care in their correctional facilities as set forth in this standard.
2. The legislature should pass this important standard into law to insure its implementation.

REFERENCES

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973), p. 36.
2. American Civil Liberties Union, The Rights of Prisoners (New York: The Hearst Corp., 1973), p. 86.

COUNCIL ACTION:

For the purpose of clarifying the standard, subsection #2 was amended by striking "licensed physician" after "of a" and replacing it with "physicians licensed by the State of Montana or other appropriate state". The standard was then adopted.

SEARCHES

ADOPTED

TASK FORCE FINDINGS

Certain searches are necessary in correctional facilities to prevent the introduction of contraband or weapons into a controlled environment. But they should not be capricious or arbitrary. The American Civil Liberties Union points out that "substantial limitations on one's privacy can be expected in prison, but this is not inconsistent with reasonable rules and procedures, made known in advance to the inmates."¹

Procedures should be developed to search inmates in correctional facilities to insure internal security.

STANDARD 2.7

1. UNLESS SPECIFICALLY AUTHORIZED BY THE COURT AS A CONDITION OF RELEASE, PERSONS SUPERVISED BY CORRECTIONAL AUTHORITIES IN THE COMMUNITY SHOULD BE SUBJECT TO THE SAME RULES GOVERNING SEARCHES AND SEIZURES THAT ARE APPLICABLE TO THE GENERAL PUBLIC.
2. ALL STATE CORRECTIONAL INSTITUTIONS SHOULD HAVE A PLAN FOR MAKING REGULAR SEARCHES OF FACILITIES AND PERSONS CONFINED TO CORRECTIONAL INSTITUTIONS. THE PLAN SHOULD PROVIDE FOR:
 - a. AVOIDING UNDUE OR UNNECESSARY FORCE, EMBARRASSMENT OR INDIGNITY TO THE INDIVIDUAL.
 - b. USING TECHNOLOGICAL DEVICES INSTEAD OF BODY SEARCHES WHEREVER FEASIBLE.
 - c. CONDUCTING SEARCHES NO MORE FREQUENTLY THAN REASONABLY NECESSARY TO CONTROL CONTRABAND IN THE INSTITUTION OR TO RECOVER MISSING OR STOLEN PROPERTY.
 - d. RESPECTING AN INMATE'S OWNERSHIP OR CONTROL OF PROPERTY WHICH IS AUTHORIZED BY THE RULES.
 - e. PUBLICATION OF THE PLAN.
 - f. ALL SEARCHES SHOULD BE ORDERED ONLY BY TOP MANAGEMENT OFFICIALS.

IMPLEMENTATION

1. The administrator of the Corrections Division should insure that correctional institutions have search plans.
2. The Department of Institutions' attorney should review these plans for their legality.
3. Applicable local law enforcement agencies should write and implement their own search rules consistent with this standard.

REFERENCES

1. American Civil Liberties Union, The Rights of Prisoners (New York: The Hearst Corp., 1973), p. 80.

COUNCIL ACTION: Adopted as written.

EQUAL TREATMENT

ADOPTED

TASK FORCE FINDINGS

Offenders should be treated fairly and without discrimination in correctional facilities. The Association of State Correctional Administrators believes that "there should be fair and objective classification of all inmates with respects of institutional life."¹

Since the reform of the offender is a goal of corrections, then it is important not to discriminate against an offender because of his race, religion, nationality, sex or politics in a correctional setting.

STANDARD 2.8

OFFENDERS SHOULD NOT BE DISCRIMINATED AGAINST BECAUSE OF THEIR RACE, RELIGION, NATIONALITY, OR POLITICAL BELIEFS.

RULES SHOULD ASSURE:

1. EQUAL OPPORTUNITY IN WORK ASSIGNMENTS, CLASSIFICATION AND PROGRAMS.
2. THAT NO BIAS WILL BE ALLOWED IN DECISIONS.
3. IN CASE OF DISCRIMINATION, PRISONERS HAVE AVAILABLE REMEDIES OPEN TO THE PUBLIC.

IMPLEMENTATION

The administrator of the Corrections Division, the warden, superintendants of the state correctional institutions and all local law enforcement agencies should continue to implement this standard.

REFERENCES

1. Association of State Correctional Administrators, Uniform Correctional Policies and Procedures (Columbia, S.C., 1972), p. 28.

COUNCIL ACTION: Adopted as written.

REHABILITATION

ADOPTED

TASK FORCE FINDINGS

All offenders should have access to rehabilitation programs designed to help them lead a law-abiding life when released from incarceration. More important, Article II, Section 28, of Montana's 1972 Constitution, states that: "Laws for the punishment of crime shall be founded on the principles of prevention and reformation."

STANDARD 2.9

A REHABILITATIVE PURPOSE SHOULD BE CONSIDERED IN EVERY SENTENCE AND TREATMENT THEREUNDER.

1. OFFENDERS SHOULD HAVE ACCESS TO VOCATIONAL TRAINING PROGRAMS AND BASIC EDUCATION UP TO HIGH SCHOOL EQUIVALENCY.
2. PUBLIC WORK PROJECTS SHALL NOT REPLACE REHABILITATION PROGRAMS THAT ARE REQUESTED AND NEEDED.

IMPLEMENTATION

1. The Corrections Division should assure compliance with this standard in all correctional facilities and should seek additional funds to implement it.
2. The legislature should appropriate the funds to implement these programs.
3. The above mentioned authorities should make known to district court judges the extent and availability of rehabilitative services and programs for sentencing purposes.

COUNCIL ACTION: Adopted as written.

AMENDED
ADOPTED

RETENTION AND RESTORATION OF RIGHTS

TASK FORCE FINDINGS

Montana's law and constitution provide adequately for the retention and restoration of rights of offenders. Only the sentencing judge may remove an offender's rights, under 95-2227, R.C.M. 1947 (Effect of Conviction), and then only for rehabilitation or the protection of society. Section 28 (Rights of the Convicted), Article II of the 1972 Constitution, returns rights to offenders upon termination of state supervision. But laws and even constitutional provisions may be changed; therefore, this law and section of the constitution are declared to be both desirable and necessary to implement the rights of offenders in Montana.

STANDARD 2.10

THE PROVISIONS OF 95-2227, R.C.M. 1947 AND
SECTION 28, ARTICLE II OF MONTANA'S 1972
CONSTITUTION ARE AFFIRMED.

COUNCIL ACTION:

The council requested that 95-2227, R.C.M. 1947 and Section 28, Article II of Montana's 1972 constitution be written out for those who might not have access to them. With this amendment the standard was adopted. See colored insert on next page.

COUNCIL ACTION

ADOPTED VERSION OF STANDARD 2.10

STANDARD 2.10

THE PROVISIONS OF 95-2227, R.C.M. 1947 AND SECTION 28, ARTICLE II OF MONTANA'S 1972 CONSTITUTION ARE AFFIRMED.

1. CONVICTION OF ANY OFFENSE SHALL NOT DEPRIVE THE OFFENDER OF ANY CIVIL OR CONSTITUTIONAL RIGHTS EXCEPT AS THEY SHALL BE SPECIFICALLY ENUMERATED BY THE SENTENCING JUDGE AS NECESSARY CONDITIONS OF THE SENTENCE DIRECTED TOWARD THE OBJECTIVES OF REHABILITATION AND THE PROTECTION OF SOCIETY.
2. NO PERSON SHALL SUFFER ANY CIVIL OR CONSTITUTIONAL DISABILITY NOT SPECIFICALLY INCLUDED BY THE SENTENCING JUDGE IN HIS ORDER OF SENTENCE.
3. WHEN A PERSON HAS BEEN DEPRIVED OF ANY OF HIS CIVIL OR CONSTITUTIONAL RIGHTS BY REASON OF CONVICTION FOR AN OFFENSE AND HIS SENTENCE HAS EXPIRED OR HE HAS BEEN PARDONED, HE SHALL BE RESTORED TO ALL CIVIL RIGHTS AND FULL CITIZENSHIP, THE SAME AS IF SUCH CONVICTION HAD NOT OCCURED.

LAWS FOR THE PUNISHMENT OF CRIME SHALL BE FOUNDED ON THE PRINCIPLES OF PREVENTION AND REFORMATION. FULL RIGHTS ARE RESTORED BY TERMINATION OF STATE SUPERVISION FOR ANY OFFENSE AGAINST THE STATE.

RULES OF CONDUCT

ADOPTED

TASK FORCE FINDINGS

Offenders should be told what is expected of them so they may follow the rules for acceptable behavior while incarcerated. This should make it easier on both the inmates and the administration. But to be effective and fair, the rules must be publicized.

Back in 1891, the rules for the conduct of prisoners were severe and rigorous. Smoking was frowned upon as, "Prisoners who have not become addicted to the use of tobacco prior to their reception at the prison will not be permitted to use the same therein during the term of their imprisonment."¹ Talking after the 9 p.m. lights out was strictly forbidden, as a "profound silence must be observed from that time until the sound of the bell the next morning."² Today's rules are obviously more liberal.

STANDARD 2.11

EACH CORRECTIONAL AGENCY SHOULD PUBLISH RULES OF CONDUCT FOR ITS OFFENDERS. THESE RULES SHOULD:

1. PROTECT AN IMPORTANT INTEREST OF THE PROGRAM OR FACILITY FOR WHICH THEY ARE INTENDED.
2. BE THE LEAST DRASTIC MEANS OF ACHIEVING THAT INTEREST.
3. BE SPECIFIC ENOUGH TO GIVE OFFENDERS ADEQUATE NOTICE OF WHAT IS EXPECTED OF THEM.
4. LIST THE PENALTIES THAT CAN BE IMPOSED FOR VIOLATIONS. OFFENDERS SHOULD RECEIVE AN UP-TO-DATE COPY OF THE RULES OF CONDUCT. CORRECTIONAL AGENCIES SHOULD NOT ATTEMPT GENERALLY TO DUPLICATE THE CRIMINAL LAW. WHEN AN ACT IS COVERED BY ADMINISTRATIVE RULES AND LAW THE FOLLOWING SHOULD APPLY:
 - a. FELONIOUS MISCONDUCT SHOULD BE PROSECUTED AND NOT PENALIZED ADMINISTRATIVELY.
 - b. IF AN OFFENDER IS PROSECUTED AND FOUND NOT GUILTY, THE CORRECTIONAL AUTHORITY SHOULD NOT TAKE FURTHER PUNITIVE ACTION.

IMPLEMENTATION

This standard should be implemented by all state correctional agencies and facilities within the Corrections Division, all county jails, adult field services and After-care.

REFERENCES

1. Montana, Rules and Regulations for the Government of the Montana State Prison (1891), Rule 42.
2. Ibid., Rule 46.

COUNCIL ACTION: Adopted as written.

DISCIPLINARY PROCEDURES

ADOPTED

TASK FORCE FINDINGS

Discipline is necessary in a correctional setting to maintain order. But as the NAC points out in its report on corrections, "when that discipline violates constitutional safeguards or inhibits or seriously undermines reformative efforts, it becomes counterproductive and indefensible."¹ Two major U.S. Supreme Court decisions have established the hearing as a basic due process requirement in major administrative decisions concerning life, liberty or property.²

STANDARD 2.12

THE FOLLOWING DISCIPLINARY PROCEDURES SHOULD BE ADOPTED FOR OFFENDERS IN RESIDENTIAL FACILITIES.

1. MINOR VIOLATIONS OF RULES OF CONDUCT ARE THOSE PUNISHABLE BY NO MORE THAN A REPRIMAND, OR LOSS OF COMMISSARY, ENTERTAINMENT, OR RECREATION PRIVILEGES FOR NOT MORE THAN 24 HOURS. THESE RULES SHOULD PROVIDE THAT:
 - a. STAFF MAY IMPOSE THE PENALTIES AFTER TELLING THE OFFENDER ABOUT HIS MISCONDUCT AND GIVING HIM THE CHANCE TO EXPLAIN OR DENY IT.
 - b. THE OFFENDER SHOULD BE NOTIFIED.
 - c. THE OFFENDER SHOULD BE GIVEN A CHANCE TO ASK AN IMPARTIAL OFFICER OR BOARD TO REVIEW THE STAFF ACTION.
 - d. WHERE THE REVIEW INDICATES THAT THE OFFENDER DID NOT COMMIT THE VIOLATION OR THE STAFF'S ACTION WAS INAPPROPRIATE, ALL REFERENCE TO THE INCIDENT SHOULD BE REMOVED FROM THE OFFENDER'S FILE.
2. MAJOR VIOLATIONS OF RULES OF CONDUCT ARE THOSE PUNISHABLE BY SANCTIONS MORE SEVERE THAN THOSE FOR MINOR VIOLATIONS. THESE INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF "GOOD TIME," TRANSFER TO SEGREGATION OR SOLITARY CONFINEMENT, TRANSFER TO A HIGHER LEVEL OF INSTITUTIONAL CUSTODY OR ANY OTHER CHANGE IN STATUS WHICH MAY TEND TO AFFECT ADVERSELY AN OFFENDER'S TIME OF RELEASE OR DISCHARGE. RULES GOVERNING MAJOR VIOLATIONS SHOULD PROVIDE FOR THE FOLLOWING PREHEARING PROCEDURES:
 - a. SOMEONE OTHER THAN THE REPORTING OFFICER SHOULD DETERMINE IF THERE IS PROBABLE CAUSE TO BELIEVE THE OFFENDER COMMITTED A VIOLATION. IF PROBABLE CAUSE EXISTS, A HEARING DATE SHOULD BE SET.

- b. THE OFFENDER SHOULD RECEIVE A COPY OF ANY DISCIPLINARY REPORT OR CHARGES OF THE ALLEGED VIOLATION AND NOTICE OF THE TIME AND PLACE OF THE HEARING.
 - c. THE OFFENDER, IF HE DESIRES, SHOULD RECEIVE ASSISTANCE IN PREPARING FOR THE HEARING FROM A MEMBER OF THE CORRECTIONAL STAFF, ANOTHER INMATE, OR OTHER AUTHORIZED PERSON.
 - d. NO SANCTION FOR THE ALLEGED VIOLATION SHOULD BE IMPOSED UNTIL AFTER THE HEARING EXCEPT THAT THE OFFENDER MAY BE SEGREGATED FROM THE REST OF THE POPULATION.
3. RULES GOVERNING MAJOR VIOLATIONS SHOULD PROVIDE FOR A HEARING ON THE ALLEGED VIOLATION WHICH SHOULD BE CONDUCTED AS FOLLOWS:
- a. THE HEARING SHOULD BE HELD AS QUICKLY AS POSSIBLE, GENERALLY NOT MORE THAN 72 HOURS AFTER THE CHARGES ARE MADE.
 - b. THE HEARING SHOULD BE BEFORE AN IMPARTIAL OFFICER OR BOARD.
 - c. THE OFFENDER SHOULD BE ALLOWED TO CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST HIM.
 - d. THE OFFENDER SHOULD BE ALLOWED TO SELECT SOMEONE TO ASSIST HIM AT THE HEARING.
 - e. THE HEARING OFFICER OR BOARD SHOULD BE REQUIRED TO MAKE ITS DECISION IN WRITING WITH ITS FINDINGS. IF THE DECISION FINDS THAT THE OFFENDER DID NOT COMMIT THE VIOLATION, ALL REFERENCE TO THE CHARGE SHOULD BE REMOVED FROM THE OFFENDER'S FILE.

IMPLEMENTATION

This standard should be implemented by state correctional institutions and facilities dealing with adults in Montana.

REFERENCES

- 1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: U.S. Government Printing Office, 1973), p. 52.
- 2. Goldberg V. Kelly, 397 U.S. 254 (1970) and Morrissey V. Brewer, 408 U.S. 471 (1972).

COUNCIL ACTION: Adopted as written.

JUVENILE DISCIPLINARY PROCEDURES

ADOPTED

TASK FORCE FINDINGS

It is necessary for Montana's juvenile institutions to adopt minimum standards of conduct for the staff when disciplining their charges to insure fair and equitable treatment for all juveniles. Written guidelines for dealing with disciplinary problems should put the staff on firm ground by giving them the necessary guidance to handle violations of rules of conduct. This standard is intended for juveniles and problems peculiar to juvenile institutions.

STANDARD 2.13

DISCIPLINARY PROCEDURES SHOULD REFLECT THE NEED TO HANDLE EACH JUVENILE INDIVIDUALLY. STAFF SHOULD DISCREETLY TREAT ACTING OUT BEHAVIOR WHICH DOES NOT REQUIRE DISCIPLINARY ACTION.

ALL VIOLATIONS OF RULES OF CONDUCT SHOULD BE HANDLED IMMEDIATELY BY THE STAFF INVOLVED.

1. MINOR VIOLATIONS OF RULES OF CONDUCT SHOULD USUALLY BE CONTROLLED BY A REPRIMAND OR SUSPENSION OF ONE OR MORE PRIVILEGES DEPENDING UPON THE SITUATION. RULES GOVERNING MINOR VIOLATIONS SHOULD PROVIDE THAT:
 - a. STAFF MAY IMPOSE THE PENALTIES AFTER TALKING WITH THE JUVENILES ABOUT THEIR ACTING OUT AND WHY THE BEHAVIOR IS UNACCEPTABLE.
 - b. THE JUVENILES ARE ALLOWED TO EXPLAIN THEIR BEHAVIOR.
 - c. JUVENILES ARE NOTIFIED OF WRITTEN REPORTS.
 - d. THE JUVENILES SHOULD BE GIVEN THE CHANCE TO TALK WITH THEIR COUNSELOR OR ANY OTHER STAFF MEMBER WHOM THEY FEEL CAN HELP THEM.
 - e. IF A VIOLATION WAS NOT COMMITTED, ALL REFERENCES TO THE INCIDENT SHOULD BE REMOVED FROM THE JUVENILE'S FILE.
2. MAJOR VIOLATIONS OF RULES OF CONDUCT ARE THOSE THAT RESULT IN CONFINEMENT IN THE DISCIPLINE UNIT OR THEIR OWN ROOM FOR 24 HOURS OR LONGER. RULES GOVERNING MAJOR VIOLATIONS SHOULD PROVIDE THAT:

- a. STAFF MAY HAVE THE JUVENILES REMOVED FROM THEIR REGULAR PROGRAM ONLY WHEN THE INCIDENT CANNOT BE MANAGED BY TALKING TO THE JUVENILE, OR WHEN THERE IS A DISRUPTION OR A RISK TO SECURITY.
- b. THE LENGTH OF DISCIPLINARY ACTION SHOULD BE DETERMINED BY SOMEONE OTHER THAN THE PERSON WHO WAS INVOLVED IN THE INCIDENT.
- c. AN INCIDENT REPORT SHOULD BE FILLED OUT BY THE STAFF MEMBER INVOLVED, AND THE JUVENILE SHOULD HAVE THE OPPORTUNITY TO RECORD HIS VERSION OF THE INCIDENT.
- d. THE JUVENILE SHOULD HAVE ACCESS TO ANY STAFF MEMBER WHOM THEY FEEL CAN HELP THEM.
- e. THE JUVENILE SHOULD BE RETURNED TO THEIR REGULAR PROGRAM AT THE EARLIEST POSSIBLE DATE.
- f. THE JUVENILES' PARENTS SHOULD BE INFORMED WHEN THE JUVENILE IS INVOLVED IN AN AWOL, ASSAULT OR OTHER SERIOUS OFFENSES.
- g. THE JUVENILE SHOULD BE CLEARLY TOLD WHAT THEY MUST DO TO RETURN TO THEIR REGULAR PROGRAM, AND OF THE APPROPRIATE TIME THIS WILL OCCUR.

ANY DISCIPLINARY ACTION SHOULD DIRECTLY RELATE TO THE SERIOUSNESS OF THE INCIDENT AND BE BASED UPON INDIVIDUAL NEEDS.

IMPLEMENTATION

This standard should be implemented by all local and state juvenile agencies and facilities.

COUNCIL ACTION: Adopted as written.

PROCEDURES FOR NONDISCIPLINARY CHANGES IN STATUS

ADOPTEDTASK FORCE FINDINGS

Correctional authorities should have guidelines on changes in status that do not involve discipline. This should assure offenders, through the standard's publicity, that these kinds of administrative decisions are not capricious or arbitrary.

STANDARD 2.14

RULES AND REGULATIONS SHOULD BE PUBLISHED FOR DETERMINING AND CHANGING THE STATUS OF OFFENDERS.

1. THE REGULATIONS SHOULD:
 - a. SPECIFY CRITERIA FOR THE SEVERAL CLASSIFICATIONS TO WHICH OFFENDERS MAY BE ASSIGNED AND THE PRIVILEGES AND DUTIES OF PERSONS IN EACH CLASS.
 - b. SPECIFY FREQUENCY OF STATUS REVIEWS OR THE NATURE OF EVENTS THAT PROMPT SUCH REVIEW.
 - c. BE MADE AVAILABLE TO OFFENDERS WHO MAY BE AFFECTED BY THEM.
 - d. TELL THE OFFENDER WHEN HIS STATUS IS BEING REVIEWED.
 - e. ALLOW THE OFFENDER TO TAKE PART IN DECISIONS BEARING ON HIS PROGRAM.
2. PERMIT THE OFFENDER TO EXPRESS HIS VIEWS ON THE CLASSIFICATION, TRANSFER, OR PROGRAM DECISION UNDER REVIEW.
3. PROCEEDINGS FOR NONDISCIPLINARY CHANGES OF STATUS SHOULD NOT BE USED TO IMPOSE DISCIPLINARY PENALTIES OR OTHERWISE PUNISH OFFENDERS FOR VIOLATIONS OF RULES OF CONDUCT OR OTHER MISBEHAVIOR.

IMPLEMENTATION

The Corrections Division should implement this standard for the prison, Swan River Youth Forest Camp and any community correctional centers that may be developed.

COUNCIL ACTION: Adopted as written.

GRIEVANCE PROCEDURE

ADOPTED

TASK FORCE FINDINGS

A procedure for handling first level grievances in a correctional institution should act as a safety valve for the offender who has a legitimate complaint. Grievances could lead to violence if an inmate has no recourse to air his problem.¹ Rules which allow the reporting of complaints would encourage open lines of communication between offenders and staff. In this way, unrest could be short-circuited.

STANDARD 2.15

GRIEVANCE PROCEDURES SHOULD HAVE THE FOLLOWING ELEMENTS:

1. EACH PERSON BEING SUPERVISED BY A CORRECTIONAL AUTHORITY SHOULD BE ABLE TO REPORT A GRIEVANCE.
2. THE GRIEVANCE SHOULD BE SENT WITHOUT CHANGE, INTERFERENCE, OR DELAY TO THE PERSON OR UNIT RESPONSIBLE FOR RECEIVING AND INVESTIGATING GRIEVANCES.
 - a. THIS PERSON SHOULD NOT, IN ANY CASE, BE CONCERNED WITH THE DAY-TO-DAY ADMINISTRATION OF THE CORRECTIONS FUNCTION THAT IS SUBJECT TO ANY ADVERSE ACTION AS A RESULT OF FILING THE REPORT.
3. PROMPTLY AFTER RECEIPT, EACH GRIEVANCE NOT PATENTLY FRIVOLOUS SHOULD BE INVESTIGATED. A WRITTEN REPORT SHOULD BE PREPARED FOR THE CORRECTIONAL AUTHORITY, THE COMPLAINING PERSON, OR IN THE CASE OF LOCAL JAILS TO THE RESPONSIBLE LOCAL GOVERNMENT OFFICIALS. THE REPORT SHOULD STATE THE FINDINGS OF THE INVESTIGATIONS AND THE RECOMMENDATIONS OF THE PERSON OR UNIT RESPONSIBLE FOR MAKING THE INVESTIGATION.
4. THE CORRECTIONAL AUTHORITY SHALL RESPOND TO EACH REPORT, INDICATING WHAT DISPOSITION WILL BE MADE OF THE RECOMMENDATIONS RECEIVED.

IMPLEMENTATION

1. The administrator of the Corrections Division should implement this standard for all state correctional institutions.
2. All local jails should have a formalized grievance procedure in accordance with the above.

REFERENCE

1. South Carolina Department of Corrections, Inmate Grievance Procedures (Columbia, S.C.: State Printing Company, 1973), p. 3.

COUNCIL ACTION: Adopted as written.

FREE EXPRESSION AND ASSOCIATION

ADOPTEDTASK FORCE FINDINGS

It is important to preserve, as much as possible, an offender's rights under the First Amendment. Free expression and association within a correctional institution would tend to reduce the more restrictive aspects of incarceration. This should not necessarily interfere with custody or security.

STANDARD 2.16

1. INDIVIDUAL OFFENDERS SHOULD BE ABLE TO EXERCISE THEIR CONSTITUTIONAL RIGHTS OF FREE EXPRESSION AND ASSOCIATION. RULES LIMITING AN OFFENDER'S RIGHT OF EXPRESSION AND ASSOCIATION SHOULD BE JUSTIFIED BY A COMPELLING STATE INTEREST. WHERE SUCH JUSTIFICATION EXISTS, THE AGENCY SHOULD ADOPT RULES WHICH PROTECT THE STATE'S INTEREST WHILE INTERFERING WITH THE OFFENDER'S RIGHTS AS LITTLE AS POSSIBLE.
 - a. RIGHTS OF EXPRESSION AND ASSOCIATION ARE INVOLVED IN THE FOLLOWING CONTEXTS:
 - (1) EXERCISE OF FREE SPEECH.
 - (2) EXERCISE OF RELIGIOUS BELIEFS AND PRACTICES. (See Standard 2.17)
 - (3) SENDING OR RECEIVING MAIL. (See Standard 2.18)
 - (4) VISITATIONS. (See Standard 2.18)
 - (5) ACCESS TO THE PUBLIC THROUGH THE MEDIA. (See Standard 2.18)
 - (6) ENGAGING IN PEACEFUL ASSEMBLIES.
 - (7) BELONGING TO AND PARTICIPATING IN ORGANIZATIONS.
 - (8) PRESERVING INDIVIDUALITY THROUGH DISTINGUISHING CLOTHING, HAIR-STYLES, AND OTHER CHARACTERISTICS RELATED TO PHYSICAL APPEARANCE, INsofar AS POSSIBLE WITHIN THE REQUIREMENTS OF SECURITY.
2. JUSTIFICATION FOR LIMITING AN OFFENDER'S RIGHT OF EXPRESSION OR ASSOCIATION WOULD INCLUDE RULES NECESSARY TO MAINTAIN ORDER OR PROTECT OTHER OFFENDERS, CORRECTIONAL STAFF, OR OTHER PERSONS FROM VIOLENCE, OR THE CLEAR THREAT OF VIOLENCE.

THE TYPE OF INSTITUTION OR PROGRAM AND ALL OTHER CONDITIONS SHOULD BE REVIEWED WHEN JUSTIFICATION IS MADE TO LIMIT AN OFFENDER'S RIGHTS.

- a. ORDINARILY, THE FOLLOWING FACTORS WOULD NOT CONSTITUTE SUFFICIENT JUSTIFICATION TO INTERFERE WITH AN OFFENDER'S RIGHTS UNLESS PRESENT IN A SITUATION WHICH CONSTITUTED A CLEAR THREAT TO PERSONAL OR INSTITUTIONAL SECURITY:
 - (1) PROTECTION OF THE CORRECTIONAL AGENCY OR ITS STAFF FROM CRITICISM, WHETHER OR NOT JUSTIFIED.
 - (2) PROTECTION OF OTHER OFFENDERS FROM UNPOPULAR IDEAS.
 - (3) PROTECTION OF OFFENDERS FROM VIEWS CORRECTIONAL OFFICIALS THINK INTERFERE WITH REHABILITATION OR OTHER CORRECTIONAL TREATMENT.
 - (4) ADMINISTRATIVE INCONVENIENCE.
 - (5) ADMINISTRATIVE COST EXCEPT WHERE UNREASONABLE AND DISPROPORTIONATE TO THAT EXPANDED ON OTHER OFFENDERS FOR SIMILAR PURPOSES.
- b. CORRECTIONAL AUTHORITIES SHOULD ENCOURAGE AND AID THE RIGHT OF EXPRESSION AND ASSOCIATION BY PROVIDING THE PROPER OPPORTUNITIES AND BUILDINGS.

IMPLEMENTATION

- 1. The Corrections Division should ensure that its offenders are able to have free expression and association, insofar as institutional security is maintained, as outlined in the above standard.
- 2. All local law enforcement agencies officials should carry out the spirit of this standard insofar as possible within the interest of security.

COUNCIL ACTION: Adopted as written.

EXERCISE OF RELIGIOUS BELIEFS AND PRACTICES

ADOPTED

TASK FORCE FINDINGS

Religion has been significant to American corrections ever since the Quakers invented the penitentiary in Pennsylvania nearly 200 years ago. At that time a bible was placed in each cell to help the inmates become penitent. This practice established a firm foundation for religion in corrections. Inmates should be allowed to exercise their religious beliefs, provided they are not an obvious threat to the institution. The right to exercise one's religious beliefs does not give inmates license to disrupt an institution through specious requests.

STANDARD 2.17

1. OFFENDERS SHOULD BE ALLOWED TO EXERCISE THEIR RELIGIOUS BELIEFS. RULES SHOULD ALLOW AND AID THE PRACTICE OF THESE BELIEFS TO THE MAXIMUM EXTENT POSSIBLE AND WITHIN REASON. CORRECTIONAL AGENCIES SHOULD, WHERE PRACTICABLE:
 - a. PROVIDE ACCESS TO PROPER PLACES FOR WORSHIP OR MEDITATION.
 - b. ENABLE OFFENDERS TO FOLLOW THE DIETARY LAWS OF THEIR FAITH.
 - c. ARRANGE THE INSTITUTION'S SCHEDULE TO THE EXTENT REASONABLY POSSIBLE SO THAT INMATES MAY WORSHIP OR MEDITATE AT THE TIME PRESCRIBED BY THEIR FAITH.
 - d. ALLOW ACCESS TO CLERGYMEN OR SPIRITUAL ADVISERS OF ALL FAITHS REPRESENTED IN THE INSTITUTION'S POPULATION.
 - e. PERMIT RECEIPT OF ANY RELIGIOUS LITERATURE AND PUBLICATIONS THAT CAN BE TRANSMITTED LEGALLY THROUGH THE UNITED STATES MAILS.
 - f. ALLOW RELIGIOUS MEDALS AND OTHER SYMBOLS THAT ARE NOT UNDULY OBTRUSIVE OR DANGEROUS.
2. EQUAL STATUS AND PROTECTION SHOULD BE GIVEN TO ALL RELIGIONS, TRADITIONAL OR UNORTHODOX.
3. THE FOLLOWING FACTORS SHOULD NOT BE CONSIDERED AS INDICATING A LACK OF RELIGIOUS SUPPORT FOR THE PRACTICE IN QUESTION:
 - a. THE BELIEF IS HELD BY A SMALL NUMBER OF INDIVIDUALS.

- b. THE BELIEF IS OF RECENT ORIGIN.
 - c. THE BELIEF IS NOT BASED ON THE CONCEPT OF A SUPREME BEING OR ITS EQUIVALENT.
 - d. THE BELIEF IS UNPOPULAR OR CONTROVERSIAL.
4. IN DETERMINING WHETHER PRACTICES ARE RELIGIOUSLY MOTIVATED, THE CORRECTIONAL AGENCY SHOULD ALLOW THE OFFENDER TO PRESENT EVIDENCE OF RELIGIOUS FOUNDATIONS TO THE OFFICIAL MAKING THE DETERMINATION.
5. ADULT CORRECTIONAL AGENCIES SHOULD NOT ATTEMPT TO CONVERT PEOPLE UNDER ITS SUPERVISION - OR PERMIT OTHERS TO DO SO WITHOUT THE CONSENT OF THE PERSON CONCERNED. REASONABLE OPPORTUNITY AND ACCESS SHOULD BE PROVIDED TO OFFENDERS REQUESTING INFORMATION ABOUT THE ACTIVITIES OF ANY RELIGION WITH WHICH THEY MAY NOT BE ACTIVELY AFFILIATED.

IMPLEMENTATION

1. This standard should be implemented in all state and local correctional institutions, facilities and jails.
2. In determining whether practices are religiously motivated, the following factors among others should be considered as supporting a religious foundation for the practice in question:
- a. Whether there is substantial literature supporting the practice as related to religious principle.
 - b. Whether there is a formal, organized worship of shared belief by a recognizable and cohesive group supporting the practice.
 - c. Whether there is a loose and informal association of persons who share common ethical, moral, or intellectual views supporting the practice.
 - d. Whether the belief is deeply and sincerely held by the offender.

COUNCIL ACTION: Adopted as written.

ACCESS TO THE PUBLIC

ADOPTED

TASK FORCE FINDINGS

Because practically all offenders return to their communities, access to the public may help offenders and prepare them for release. Readjusting to society is hastened if all ties with family, friends and the public are not broken. The American Correctional Association states, "correspondence and visiting privileges can be an important and valuable part of a realistic program."¹

STANDARD 2.18

OFFENDERS SHOULD HAVE THE RIGHT TO BE IN TOUCH WITH THE PUBLIC. RULES LIMITING THIS SHOULD BE CONSISTENT WITH STANDARD 2.16. QUESTIONS OF RIGHT OF ACCESS TO THE PUBLIC ARISE PRIMARILY IN THE CONTEXT OF REGULATIONS AFFECTING MAIL, VISITS AND THE MASS MEDIA.

1. MAIL. UNLESS THERE IS A THREAT TO THE SECURITY AND CONTROL OF THE INSTITUTION, OFFENDERS SHOULD HAVE THE RIGHT TO TALK OR WRITE TO PERSONS OR ORGANIZATIONS AND TO SEND AND RECEIVE LETTERS, PACKAGES, BOOKS, PERIODICALS AND ANY OTHER MATERIAL THAT CAN BE LAWFULLY MAILED. THE FOLLOWING ADDITIONAL GUIDELINES SHOULD APPLY:
 - a. THE VOLUME OF MAIL TO OR FROM A PERSON UNDER SUPERVISION SHOULD NOT BE LIMITED.
 - b. CORRECTIONAL AUTHORITIES SHOULD HAVE THE RIGHT TO INSPECT INCOMING AND OUTGOING MAIL. CASH, CHECKS, OR MONEY ORDERS SHOULD BE REMOVED FROM INCOMING MAIL AND CREDITED TO OFFENDER'S ACCOUNTS. IF CONTRABAND IS DISCOVERED IN EITHER INCOMING OR OUTGOING MAIL, IT MAY BE REMOVED. ONLY ITEMS THAT THREATEN THE SECURITY OR THE INSTITUTION SHOULD BE CONSIDERED CONTRABAND. OFFENDERS SHOULD RECEIVE A REASONABLE POSTAGE ALLOWANCE TO MAINTAIN COMMUNITY TIES.
2. VISITS:
 - a. CORRECTIONAL AUTHORITIES SHOULD NOT LIMIT THE NUMBER OF VISITORS AN OFFENDER MAY RECEIVE OR THE LENGTH OF SUCH VISITS EXCEPT IN ACCORDANCE WITH REGULAR INSTITUTIONAL SCHEDULES AND REQUIREMENTS.

- b. CORRECTIONAL AUTHORITIES SHOULD FACILITATE AND PROMOTE VISITS.
- 3. MEDIA:
 - a. JOURNALISTS SHOULD BE ADMITTED TO CORRECTIONAL INSTITUTIONS DURING ADMINISTRATIVE BUSINESS HOURS. THEY SHOULD BE ENCOURAGED TO CONTACT THE INSTITUTION PRIOR TO ARRIVAL IN ORDER TO MAKE THE NECESSARY PLANS. BY PRIOR ARRANGEMENT, ACCESS MAY BE PERMITTED DURING OTHER THAN ADMINISTRATIVE BUSINESS HOURS.
 - b. LIMITATIONS UPON THE NUMBER OF JOURNALISTS TO BE ADMITTED AT ANY ONE TIME MAY BE IMPOSED BY THE INSTITUTIONAL HEAD. DURING INSTITUTIONAL DISTURBANCES ADMISSION MAY BE PROHIBITED.
 - c. MEMBERS OF THE MEDIA MAY BE ESCORTED WHILE IN THE INSTITUTION.

IMPLEMENTATION

This standard should be implemented by all institutions of the Corrections Division and by all jails in Montana.

REFERENCES

- 1. American Correctional Association, A Manual of Correctional Standard (Washington, D.C.: American Correctional Association, 1966), p. 542.

COUNCIL ACTION: Adopted as written.

REMEDIES FOR VIOLATION OF AN OFFENDER'S RIGHTS

ADOPTEDTASK FORCE FINDINGS

If the rights of offenders are to be carried out, then a mechanism is required to insure that the standards in this chapter are implemented.

STANDARD 2.19

PROVISIONS SHOULD BE MADE TO REDRESS THE RIGHTS OF OFFENDERS WHICH ARE ABRIDGED.

1. ADMINISTRATIVE REMEDIES, NOT REQUIRING THE INTERVENTION OF A COURT, SHOULD INCLUDE AT LEAST THE FOLLOWING:
 - a. PROCEDURES ALLOWING AN OFFENDER TO SEEK REDRESS WHERE HE BELIEVES HIS RIGHTS HAVE BEEN OR ARE ABOUT TO BE VIOLATED. SUCH PROCEDURES SHOULD BE CONSISTENT WITH STANDARD 2.15.
 - b. POLICIES OF INSPECTION AND SUPERVISION TO ASSURE PERIODIC EVALUATION OF INSTITUTIONAL CONDITIONS AND STAFF PRACTICES THAT MAY AFFECT OFFENDERS' RIGHTS.
 - c. POLICIES WHICH:
 - (1) ASSURE WIDE DISTRIBUTION AND UNDERSTANDING OF THE RIGHTS OF OFFENDERS AMONG BOTH OFFENDERS AND CORRECTIONAL STAFF.
 - (2) PROVIDE THAT THE INTENTIONAL OR PERSISTENT VIOLATION OF AN OFFENDER'S RIGHTS IS JUSTIFICATION FOR REMOVAL FROM OFFICE OR EMPLOYMENT OF ANY CORRECTIONAL WORKER.
2. JUDICIAL REMEDIES FOR VIOLATION OF RIGHTS SHOULD INCLUDE CRIMINAL PENALTIES FOR INTENTIONAL VIOLATIONS OF AN OFFENDER'S RIGHTS.

IMPLEMENTATION

1. The Corrections Division and all local correctional agencies should adopt the administrative remedies in part 1 of this standard for the violation of offender's rights.
2. Legislation is required to implement the judicial remedy in part 2 of this standard.

COUNCIL ACTION: Adopted as written.

DIVERSION



CHAPTER 3 - OVERVIEW

DIVERSION

The Corrections Task Force believed diversion to be such an important process that it should not be left to the deliberations of one committee. Therefore, one member each of the Police, Courts, Corrections and Community Crime Prevention Task Forces formed a diversion subcommittee. The three standards contained in this chapter are the product of its meetings. (See the Courts Task Force Report for two standards on the criteria and procedures for diversion.)

Diversion of adult offenders in Montana rests totally within the discretion of the county attorney. No standard exists to practice diversion on an organized, formal basis with criteria that will best meet the needs of the community and the offender. Diversion is defined as halting the criminal justice process between identification (through apprehension by a peace officer) of an offender and adjudication, and processing the offender into an alternate program outside of the criminal justice system.

Diversion of offenders should insure that those who do not belong in the traditional criminal justice system are excluded -- such as some juveniles, misdemeanants and some first-time offenders. The exclusion of such offenders should allow courts and corrections agencies to concentrate exclusively upon those offenders that should be processed through the criminal justice system. More efficient use of available resources, money and

manpower will result. The diversion standards pertain to juveniles as well as adults. Standard 3.1 will aid the county attorneys by providing an organized system to follow for a diversion program. The standard establishes guidelines enabling the prosecutor to determine who should be diverted into a non-criminal justice program. The standard should formalize procedures that are now being practiced in many jurisdictions as well as standardize use of the county attorney's latitude of choices. A formal diversion process will insure equal protection of the law in counties where it is standardized, by diverting the same types of offenders without discrimination. The constitutional question of due process is solved by accepting only volunteers into diversion programs who waive their rights to a speedy trial.

The potential for abuse of diversion is another reason why it should have standards to guide its use in Montana. More people can be brought under the control of the criminal justice system through diversion. The promise of deferring prosecution could coerce offenders into grasping it as their only hope because they cannot make bail to get out of jail. Another problem is that the innocent may opt for diversion, much for the same reason as the guilty - simply to get out of the system as quickly as possible. One more potential abuse is that diversion may exert greater control over offenders than if they remained in the system. This could be due to the propensity to divert the best risks. But the greatest danger of diversion may be summed up as follows: "The guilty we convict, the innocent we divert and

supervise."¹ Formalized diversion lends itself to safeguarding against these very dangers.

Standard 3.1 states "Each county attorney," which places the implementation of the standard with local governments rather than the state. Local authorities should know what programs are available for adults and juveniles that would be diverted. In this way, counties could operate diversion programs which meet local needs, and not be locked into unwieldy programs forced upon them by the state government. The Community Crime Prevention Task Force has adopted standards urging communities to inventory their resources (Standard 2.1) and requesting that local communities assess the opportunities for diversion (Standard 2.4). Both standards complement this chapter, because diversion is a local, rather than state, program.

Diversion is different from established procedures that do not incarcerate the offender, such as deferred or suspended sentences, pre-trial release, bail or probation, because diversion halts or avoids penetration into the criminal justice system rather than minimizing it. Diversion is also different than police discretion, which is the officer's choice on the street whether to arrest. Diversion, because it is practiced by the county attorney, after the accused is apprehended, cannot interfere with law enforcement discretion. It occurs when a county attorney halts prosecution and places the offender into a non-criminal justice program--such as Alcoholics Anonymous.

Upon completion of the program, the charge is dismissed and the records will have restricted dissemination. Prosecution delays the time the offender will receive treatment, while it increases costs through jail time or bail and court expenses. Diversion expedites the process of treating the offender while removing him from the criminal justice system. It is a program for those who accept responsibility for their acts, and not the innocent.

By practicing diversion, the county attorney's limited budget would be directed toward those defendants that are a threat to the public safety and are more deserving of prosecution. It is estimated that currently the normal court process in Billings costs \$761.10, while the costs for deferred prosecution are \$390.32.² Criminal cases are increasing without an attendant increase in court personnel. The Fourth Judicial District in Missoula experienced a dramatic jump in criminal cases from 1970 through 1973.³ Nearly one-eighth of all cases in that court's history occurred in that three-year period (500 out of 4,250).⁴ The First Judicial District in Helena has had a 17% increase in criminal cases in 1974 (107 for 1974 and 91 in 1973).⁵ And the 13th Judicial District in Billings requested another judge. The criminal cases filed there increased from 357 in 1973 to 459 in 1974, for a boost of 11%, and criminal cases have jumped 204% in this court over the past 20 years.⁶ Diversion, by halting prosecution of nonserious offenders, could help a great deal to reduce caseloads and allow prosecutors and courts to concentrate on serious and repeat offenders.

Diversion is presently practiced in Montana under the Youth Court Act which has two diversion provisions. The standards in this chapter do not in any way interfere with these diversionary programs in Montana's Youth Court Act. Standard 3.3, "Role of Police in Intake and Detention," complements the present law.

In summation, the diversion standards are not intended to molly coddle hard-core criminals. Rather, they are standards with selection criteria for non-serious offenders to be used with community support and assistance, and which offer some offenders the opportunity to live a law-abiding life. Diversion, if properly practiced, could not only save dollars by not processing first offenders through the courts system, but also could save human beings as well by not allowing certain offenders to be put into the corrections system.

The Montana County Attorney's Association voted unanimously in favor of diversion at its 1975 convention.⁷ The major concerns were funding and social resources for formalized diversion programs. Small counties lack both. But the attorneys agreed that diversion is used in all counties -- resources or not.⁸ They also agree that minimum standards for diversion were desirable, provided they were not made mandatory.⁹

As the NAC report on Corrections states:

Probably the most significant contribution to the field of criminal justice today would be development of a schema that systematically, and on a selected basis, effectively screens subjects out of the criminal justice system in terms of their real danger to society rather than the prejudices of individual members of the criminal justice system.¹⁰

Standardized diversion is both valuable and necessary for Montana.

See the minority report in the addendum for Standard 8.2, "Juvenile Intake Services."

REFERENCES

1. Norval Morris and Gordon Hawkins, The Future of Imprisonment (Chicago: University of Chicago Press, 1974), p. 10.
2. Grant Application #74-43561, for Pretrial Diversion Project in Billings, Montana, pp. 55-56.
3. Telephone conversation, Fourth District Court clerk, February 1975.
4. Ibid.
5. Telephone conversation, First District Court clerk, February 1975.
6. Telephone conversation, Thirteenth District Court clerk, February 1975.
7. Letter from Robert L. Deschamps, III, Missoula county attorney, August 4, 1975.
8. Ibid.
9. Ibid.
10. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: U.S. Government Printing Office, 1973), p. 77.

USE OF DIVERSION

ADOPTED

TASK FORCE FINDINGS

Diversion is presently practiced in Montana at the discretion of the county attorneys, especially in the larger counties. A recent study of Montana law and practice states: An increasing number of prosecutors are exploring the possibility of deferred prosecution of certain criminal cases. In many of the smaller counties, this practice is frequently the rule. It is beginning to attract the attention of prosecutors in larger counties where thousands of dollars are spent processing certain types of offenders (frequently given deferred sentences) through a probation procedure which probably is of little benefit. Typical of the situation is the misdemeanor drug offender who is given a deferred imposition of sentence but who is required to consult regularly with an overworked probation officer who cannot afford to spend any time on the case. These cases also cause much additional work for prosecutors, defense counsel and trial judges.¹ PROBLEM: There is no standardized program of diversion in Montana because it is used informally; due to this informality, there is no evaluation of the programs to determine success or failure. Lastly, diversion is so often ill-defined and improperly used as a term that it cries for a standardized definition.

STANDARD 3.1

DIVERSION IS DEFINED AS HALTING THE CRIMINAL JUSTICE PROCESS BETWEEN IDENTIFICATION OF AN OFFENDER AND ADJUDICATION, AND PROCESSING THE OFFENDER INTO AN ALTERNATE PROGRAM. IDENTIFICATION MEANS THROUGH ARREST OR THE SERVICE OF A SUMMONS OR CITATION.

1. THE PLANNING PROCESS AND THE IDENTIFICATION OF DIVERSION SERVICES TO BE PROVIDED SHOULD FOLLOW GENERALLY AND BE ASSOCIATED WITH TOTAL SYSTEM PLANNING. (See Corrections Standard 8.1)
 - a. WITH PLANNING DATA AVAILABLE, COUNTY ATTORNEYS SHOULD DEVELOP PRIORITIES, LINES OF RESPONSIBILITY, COURSES OF PROCEDURE, AND OTHER POLICIES TO SERVE AS GUIDELINES FOR ITS USE.
 - b. POLICIES, PRACTICES, AS WELL AS THE OUTCOME OF DIVERSION DECISIONS, SHOULD BE EVALUATED.
 - c. COUNTY ATTORNEYS SHOULD MAINTAIN A CURRENT AND COMPLETE LISTING OF COMMUNITY RESOURCES TO WHICH PERSONS CAN BE DIVERTED FOR SERVICES RELATING TO THEIR PROBLEMS AND SEEK THEIR COOPERATION IN DIVERSION.

2. EACH DIVERSION PROGRAM SHOULD OPERATE UNDER A SET OF WRITTEN GUIDELINES THAT INSURE PERIODIC REVIEW OF POLICIES AND DECISIONS. THE GUIDELINES SHOULD SPECIFY:

- a. THE OBJECTIVES OF THE PROGRAM AND THE TYPES OF CASES TO WHICH IT IS TO APPLY.
- b. A REQUIREMENT THAT THE COUNTY ATTORNEY MAKING THE DIVERSION DECISION STATE IN WRITING THE BASIS FOR HIS DETERMINATION DENYING OR APPROVING DIVERSION IN THE CASE OF EACH OFFENDER.
- c. THE EVALUATION METHODOLOGY WHICH IS BEING USED TO EVALUATE THE SUCCESS OR FAILURE OF THE DIVERSION PROGRAM.

IMPLEMENTATION

Each county attorney should develop and implement by 1977, formally organized programs of diversion with emphasis on the youthful offender. Criteria should be established for screening and referral to diversion programs.

REFERENCES

- 1. Montana Supreme Court Cross-Comparison Study of A.B.A. Standards with Montana Law and Practice (1973), p. 303.

CROSS-REFERENCE STANDARDS

Courts Task Force Standards 2.1, "General Criteria for Diversion," and 2.2, "Procedure for Diversion Programs."

Community Crime Prevention Task Force Standards 2.1, "Inventory of Community Resources," and 2.4, "Adult and Juvenile Diversion Programs."

COUNCIL ACTION: Adopted as written.

DECISIONMAKING IN INDIVIDUAL CASES

AMENDED
ADOPTEDTASK FORCE FINDINGS

Quality information provides the foundation for equitable and proper decisions. Montana's county attorneys have a vital need for suitable information on offenders under consideration for diversion. Good data provides a firm base for the entire diversion program by helping prosecutors make the correct decisions to divert the proper offenders. PROBLEM: Diversion, as practiced in Montana, does not rely on quality information with which to base decisions. Information placed in the diverted offender's file does not have restricted access and dissemination.

STANDARD 3.2

A COURT INFORMATION SYSTEM SHOULD PROVIDE INFORMATION UNIQUE TO THE DEFENDANT AND TO THE CASE. REQUIRED INFORMATION INCLUDES:

1. DEFENDANT BACKGROUND DATA, SUCH AS HIS FAMILY STATUS, EMPLOYMENT, RESIDENCE, EDUCATION, PAST HISTORY AND ABILITY TO PAY FOR AN ATTORNEY.
2. CURRENT CASE HISTORY STATING THE PROCEEDINGS ALREADY COMPLETED, THE LENGTH OF TIME BETWEEN PROCEEDINGS, CONTINUANCES (by reason and source), REPRESENTATION AND OTHER PARTICIPANTS.
3. EVERY POLICE AGENCY FORMALLY SHOULD MAKE INFORMATION FROM ITS FILES AVAILABLE TO OTHER CRIMINAL JUSTICE AGENCIES AND TO THE COURTS FOR REFERENCE IN MAKING DIVERSION, SENTENCING, PROBATION AND PAROLE DETERMINATIONS.
4. WHEN A PERSON IS ENTERED INTO THE DIVERSION PROCESS, THIS SHALL BE PLACED INTO HIS CRIMINAL HISTORY FILE AS A DISPOSITION.
5. THE RECORDS OF SUCCESSFUL DIVERSION PARTICIPANTS SHOULD HAVE A HIGHLY SENSITIVE ACCESS AND DISSEMINATION.

IMPLEMENTATION

County attorneys, courts and law enforcement agencies should implement this standard.

CROSS-REFERENCE STANDARDS

Information Systems Standard 1.7, "Criminal Justice Component Information Systems" and Standard 6.2, "Access and Dissemination."

COUNCIL ACTION:

This standard was amended by the insertion of subsection #4 which provides for diversion to be entered into a criminal history file as a disposition. It was also amended by changing "restricted access" in subsection #5 to "highly sensitive". This action further protects an individual's rights as well as assists the intent of a diversion program.

ROLE OF POLICE IN JUVENILE INTAKE AND DETENTION

TASK FORCE FINDINGS

Law enforcement in Montana has a proper role in making detention decisions where the juvenile court is not always readily available to decide which youth is to be held. PROBLEM: The least restrictive alternatives are not always considered before juveniles are placed in detention.

STANDARD 3.3

EACH JUVENILE COURT IN MONTANA IMMEDIATELY SHOULD TAKE THE LEADERSHIP IN WORKING OUT WITH LOCAL PROSECUTION AND LAW ENFORCEMENT AGENCIES POLICIES AND PROCEDURES GOVERNING THE DISCRETIONARY DIVERSION AUTHORITY OF POLICE OFFICERS.

1. POLICE AGENCIES SHOULD ESTABLISH WRITTEN POLICIES AND GUIDELINES TO SUPPORT POLICE DISCRETIONARY AUTHORITY AT THE POINT OF FIRST CONTACT AS WELL AS AT THE POLICE STATION. THE GOAL SHOULD BE TO DIVERT JUVENILES TO ALTERNATIVE COMMUNITY-BASED PROGRAMS AND HUMAN RESOURCE AGENCIES OUTSIDE THE JUVENILE JUSTICE SYSTEM WHEN THERE IS NO RISK TO THE SAFETY OF THE COMMUNITY. DISPOSITION MAY INCLUDE:
 - a. RELEASE ON THE BASIS OF UNFOUNDED CHARGES.
 - b. REFERRAL TO PARENTS (warning and release).
 - c. REFERRAL TO SOCIAL AGENCIES.

2. REFERRAL TO JUVENILE COURT INTAKE SERVICES MUST BE MADE WITHIN 24 HOURS AFTER DETENTION. WHEN POLICE HAVE TAKEN CUSTODY OF A MINOR, AND PRIOR TO DISPOSITION UNDER PARAGRAPH 2 ABOVE, THE FOLLOWING GUIDELINES SHOULD BE OBSERVED.

1. UNDER THE PROVISIONS OF GAULT AND MIRANDA, POLICE SHOULD FIRST WARN JUVENILES OF THEIR RIGHT TO REMAIN SILENT WHILE UNDER CUSTODIAL QUESTIONING.
2. THE SECOND ACT AFTER APPREHENDING A MINOR SHOULD BE THE NOTIFICATION OF HIS PARENTS.
3. EXTRAJUDICIAL STATEMENTS TO POLICE OR COURT OFFICERS NOT MADE IN THE PRESENCE OF PARENTS OR COUNSEL SHOULD BE INADMISSIBLE IN COURT.
4. JUVENILES SHOULD NOT BE FINGERPRINTED OR PHOTOGRAPHED OR OTHERWISE ROUTED THROUGH THE USUAL ADULT BOOKING PROCESS WITHOUT PERMISSION FROM THE COURT.
5. JUVENILE RECORDS SHOULD BE MAINTAINED PHYSICALLY SEPARATE FROM ADULT CASE RECORDS.

IMPLEMENTATION

All law enforcement agencies, courts and county attorneys, should carry out this standard.

COUNCIL ACTION:

The council deleted all of paragraph 2 in this standard as they felt the Montana Youth Act and current law more than adequately covered this topic. See colored insert on next page.

COUNCIL ACTION

ADOPTED VERSION OF STANDARD 3.3

STANDARD 3.3

EACH JUVENILE COURT IN MONTANA IMMEDIATELY SHOULD TAKE THE LEADERSHIP IN WORKING OUT WITH LOCAL PROSECUTION AND LAW ENFORCEMENT AGENCIES POLICIES AND PROCEDURES GOVERNING THE DISCRETIONARY DIVERSION AUTHORITY OF POLICE OFFICERS.

1. POLICE AGENCIES SHOULD ESTABLISH WRITTEN POLICIES AND GUIDELINES TO SUPPORT POLICE DISCRETIONARY AUTHORITY AT THE POINT OF FIRST CONTACT AS WELL AS AT THE POLICE STATION. THE GOAL SHOULD BE TO DIVERT JUVENILES TO ALTERNATIVE COMMUNITY-BASED PROGRAMS AND HUMAN RESOURCE AGENCIES OUTSIDE THE JUVENILE JUSTICE SYSTEM WHEN THERE IS NO RISK TO THE SAFETY OF THE COMMUNITY. DISPOSITION MAY INCLUDE:
 - a. RELEASE ON THE BASIS OF UNFOUNDED CHARGES.
 - b. REFERRAL TO PARENTS (warning and release).
 - c. REFERRAL TO SOCIAL AGENCIES.

PRETRIAL RELEASE AND DETENTION



CHAPTER 4 - OVERVIEW

PRETRIAL RELEASE AND DETENTION

It is estimated that 380 offenders are in Montana's jails daily, many of whom are awaiting trial or the disposition of their case. In 1971, 65 percent of the persons arrested in Montana were held in jail, for a total of 15,044 people.¹ There is a need for pretrial release and detention standards to provide an organized and rational procedure for dealing with persons following their arrest, but prior to trial.

Pretrial detainees are the responsibility of corrections. Jails, jail programs and jailed offenders are all involved in "corrections." This chapter is addressed to district court judges and sheriffs, and contains some controversial standards, such as Standard 4.2, "Alternatives to Pretrial Detention", which recommends the elimination of bail bondsmen in Montana. Bail practices discriminate against the poor, making it an inequitable form of release. Yet the 1972 Montana Constitution (Article II), Section 21, states that "All persons should be bailable by sufficient sureties..." and Section 22 reads that "Excessive bail shall not be required." Rather than recommending a constitutional amendment, it is recommended that the bail bondsman be eliminated through the use of the court accepting bond.

Standard 4.3, "Persons Unfit to Proceed with Trial", states that persons deemed incompetent to stand trial should be treated like other offenders and should be eligible for pre-trial release. The standard also seeks to reduce the time they have to serve in a mental institution, unless under a civil commitment. If it is determined that they are too dangerous to remain free, then civil commitment proceedings should begin. This standard is intended to prevent an indeterminate commitment to an institution because of incompetency to stand trial.

In keeping with the spirit of this entire report, it is recommended that as many suspected offenders as possible remain in the community unless there is evidence that they are dangerous or will not report for trial. This chapter is aimed at insuring the 4th, 5th and 6th Amendments to the U.S. Constitution, which provide due process of law. In effect, it requires that the rich be treated the same as the poor. Obviously, the standards require time and money, but this should not be a priority over the fundamental rights of the accused.

REFERENCE

1. State of Montana, Jail Survey (1971), p. 7.

CONSTRUCTION POLICY FOR PRETRIAL DETENTION FACILITIES

ADOPTED

TASK FORCE FINDINGS

Evaluation and planning are vital ingredients when studying the need for a new jail. Many of Montana's jails are decrepit and in need of major repair or demolition to make way for a new facility. But before this is done, all other avenues for pretrial detention should be explored, such as alternatives to incarceration and regional jails. The 1971 survey of Montana's jails recommends that regionalization should be stressed wherever possible and that "any federal funds being used for upgrading detention facilities be given on a priority basis to those considering consolidation."¹

PROBLEM: Montana has no standard to study alternatives when exploring the need for new jails.

STANDARD 4.1

NO NEW PHYSICAL FACILITY FOR DETAINING PERSONS AWAITING TRIAL SHOULD BE CONSTRUCTED UNTIL:

1. A COMPREHENSIVE PLAN IS DEVELOPED IN ACCORDANCE WITH RECOMMENDATION 4-A.
2. ALTERNATIVE MEANS OF HANDLING PERSONS AWAITING TRIAL AS RECOMMENDED IN STANDARD 4.2 ARE IMPLEMENTED, ADEQUATELY FUNDED, AND PROPERLY EVALUATED.
3. THE POSSIBILITIES OF REGIONALIZATION OF PRETRIAL DETENTION FACILITIES ARE PURSUED.

IMPLEMENTATION

Local governments should determine the need for new jails in accordance with this standard.

REFERENCE

1. State of Montana, Jail Survey (1971), p.113.

COUNCIL ACTION: Adopted as written.

ALTERNATIVES TO PRETRIAL DETENTION

ADOPTED

TASK FORCE FINDINGS

Alternatives to money bail in Montana are recommended because bail is decidedly prejudicial against the poor. In other jurisdictions, programs that serve as alternatives to bail have had excellent results in the court appearances of offenders.¹ PROBLEM: The bail system discriminates against the poor. Montana's courts do not have alternatives to pretrial detention, except for bail and release on one's own recognizance

STANDARD 4.2

THE USE OF A VARIETY OF ALTERNATIVES TO THE DETENTION OF PERSONS AWAITING TRIAL SHOULD BE DEVELOPED, AUTHORIZED AND ENCOURAGED. THE USE OF THESE ALTERNATIVES SHOULD BE GOVERNED BY THE FOLLOWING:

1. JUDICIAL OFFICERS, ON THE BASIS OF INFORMATION AVAILABLE TO THEM, SHOULD SELECT FROM THE LIST OF THE FOLLOWING ALTERNATIVES THE ONE THAT WILL MOST REASONABLY ASSURE THE APPEARANCE OF THE ACCUSED FOR TRIAL. IF NO SINGLE CONDITION GIVES THAT ASSURANCE, THEN A COMBINATION OF THE FOLLOWING:
 - a. RELEASE ON RECOGNIZANCE WITHOUT FURTHER CONDITIONS.
 - b. RELEASE ON THE EXECUTION OF AN UN-SECURED APPEARANCE BOND IN AN AMOUNT SPECIFIED.
 - c. RELEASE INTO THE CARE OF A QUALIFIED PERSON OR ORGANIZATION REASONABLY CAPABLE OF ASSISTING THE ACCUSED TO APPEAR AT TRIAL.
 - d. RELEASE TO THE SUPERVISION OF A PROBATION OFFICER OR SOME OTHER PUBLIC OFFICIAL.
 - e. RELEASE WITH RESTRICTIONS ON ACTIVITIES, ASSOCIATIONS, MOVEMENTS, AND RESIDENCE REASONABLY RELATED TO SECURING THE APPEARANCE OF THE ACCUSED.

- f. RELEASE ON THE BASIS OF FINANCIAL SECURITY TO BE PROVIDED BY THE ACCUSED.
- g. IMPOSITION OF ANY OTHER RESTRICTIONS OTHER THAN DETENTION REASONABLY RELATED TO SECURING THE APPEARANCE OF THE ACCUSED.
- h. DETENTION, WITH RELEASE DURING CERTAIN HOURS FOR SPECIFIED PURPOSES.
- i. DETENTION OF THE ACCUSED.
2. IN SELECTING THE FORM OF PRETRAIL RELEASE, JUDGES SHOULD CONSIDER THE NATURE AND CIRCUMSTANCES OF THE OFFENSE CHARGED, THE WEIGHT OF THE EVIDENCE AGAINST THE ACCUSED, HIS TIES TO THE COMMUNITY, HIS RECORD OF CONVICTIONS, IF ANY, AND HIS RECORD OF APPEARANCE AT COURT PROCEEDINGS OR OF FLIGHT TO AVOID PROSECUTION.

IMPLEMENTATION

1. Bail bondsmen may be eliminated procedurally through legislation and in effect by the state replacing the bail bondsman. In a 10% bond program, the accused would pay 10% of the bail to the state. Upon compliance with the conditions of his bail the bond would be returned.
2. No person should be allowed to act as surety for compensation. Under 94-7-308, R.C.M. 1947, it is already a criminal offense not to appear before a court as required.

REFERENCES

1. The Vera Foundation of New York City experienced a failure rate of only 7/10 of 1 percent of the offenders who were released on their promise to appear in court. Chicago realized a 5 1/2 percent failure rate in a 10 percent bond program, which returns 90 percent of the offender's money when he appears in court. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington: D.C.: U.S. Government Printing Office, 1973), p. 109.

COUNCIL ACTION: Adopted as written.

PERSONS UNFIT TO PROCEED WITH TRIAL

TASK FORCE FINDINGS

The subject of persons unfit to proceed with trial because of mental disease or defect is an extremely complicated and grave matter. Persons alleged or adjudged unfit to proceed should be treated the same as any other person accused of a crime but not yet tried. Mental incompetency should not mean that the incompetent are limited in their protection under the law and through due process.

STANDARD 4.3

THE FOLLOWING PROCEDURES SHOULD BE DEVELOPED FOR PERSONS AWAITING TRIAL WHO ARE ALLEGED TO BE OR ARE ADJUDICATED UNFIT TO PROCEED BECAUSE OF MENTAL DISEASE OR DEFECT:

1. PERSONS AWAITING TRIAL FOR A CRIME AND ARE ALLEGED TO BE UNFIT TO PROCEED WITH THE TRIAL SHOULD BE ELIGIBLE FOR BAIL OR OTHER ALTERNATIVE FORMS OF RELEASE TO THE SAME EXTENT AS OTHER PERSONS AWAITING TRIAL.

WHERE THE COURT ORDERS AN EXAMINATION AND DIAGNOSIS TO DETERMINE FITNESS TO PROCEED, THE COURT SHOULD IMPOSE ON THE PERSON THE LEAST RESTRICTIVE MEASURES REQUIRED TO ASSURE HIS PRESENCE FOR TRIAL AND FOR EFFECTIVE EXAMINATION AND DIAGNOSIS.

2. WHERE THE COURT ORDERS TREATMENT TO ENABLE THE PERSON TO REGAIN FITNESS TO PROCEED UNDER SECTION 95-506, R.C.M. 1947, IT SHOULD IMPOSE THE LEAST RESTRICTIVE MEASURE APPROPRIATE. OUTPATIENT TREATMENT SHOULD BE GIVEN PREFERENCE OVER INPATIENT TREATMENT, AND DETENTION SHOULD BE IMPOSED ONLY UPON SUBSTANTIAL EVIDENCE THAT:
 - a. THERE IS A REASONABLE PROBABILITY THAT THE PERSON WILL REGAIN FITNESS TO PROCEED WITHIN TWO YEARS OR THE MAXIMUM PRISON SENTENCE FOR THE OFFENSE CHARGED, WHICH- EVER IS SHORTER, AND DETENTION IS REQUIRED TO ASSURE HIS PRESENCE FOR TRIAL; OR
 - b. THERE IS A GREAT PROBABILITY THAT TREATMENT WILL ENABLE THE PERSON TO REGAIN FITNESS TO PROCEED AND SUCH TREATMENT CAN BE ADMINISTERED EFFECTIVELY ONLY IF THE PERSON IS DETAINED.

3. THIS APPLIES EQUALLY TO COURTS OF LIMITED JURISDICTION AS WELL AS TO COURTS OF GENERAL JURISDICTION.

IMPLEMENTATION

The following provisions should be adopted through legislation or court rule.

1. Require periodic review of cases of persons adjudged incompetent to stand trial.
2. Set a maximum time limit for the treatment of incompetency. Such maximum limits should not exceed two years or the maximum prison sentence for the offense charged, whichever is shorter.
3. Provide that the actual time limit set by the court for the treatment of incompetency should be based on competent professional testimony regarding the time likely to be required for such treatment.
4. Provide that when the time limit expires or when it is determined that restoration to competency is unlikely the person should be released and the criminal charge dismissed.
5. Provide that where it is believed that the person adjudicated incompetent is dangerous to himself or others and should be detained, civil commitment procedures should be instituted.

COUNCIL ACTION:

To clarify and remove a possible loophole, the council added the following subsection to the standard. "#3 - This applies equally to courts of limited jurisdiction as well as to courts of general jurisdiction." The standard was then adopted.

INCOMPETENCY EXAMINATION

ADOPTEDTASK FORCE FINDINGS

Present state law allows a psychiatric examination at Warm Springs State Hospital "for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose".¹ This provision is subject to abuse because it places the responsibility for a psychiatric evaluation period upon a judge, who is not trained in psychiatry.

STANDARD 4.4

WHEN THE COURT ORDERS A DEFENDANT COMMITTED TO A HOSPITAL OR OTHER FACILITY FOR THE PURPOSE OF AN EXAMINATION TO DETERMINE MENTAL DISEASE OR DEFECT, SUCH COMMITMENT SHOULD NOT BE LONGER THAN ACTUALLY NECESSARY FOR THE EXAMINATION AND IN NO CASE LONGER THAN SIXTY (60) DAYS.

IMPLEMENTATION

1. 95-505, R.C.M. 1947, should be amended as set forth in the above standard.

REFERENCE

1. 95-505, R.C.M. 1947.

COUNCIL ACTION: Adopted as written.

EXPEDITING CRIMINAL TRIALS

REJECTED

TASK FORCE FINDINGS

Speedy justice is the constant quest of the criminal justice system, and part of the public's cry for reform concerns hastening the time between the apprehension and trial of the accused. Public confidence will be increased if defendants are brought to trial as soon as possible, while providing all rights of due process under the law. Whether rightly or wrongly, continuances and delays are often perceived as artful dodging on the part of the defense, and indeed, slowing the judicial process does aid the defense. The old saw of "Justice delayed is justice denied," is especially true when defendants are allowed to capriciously stall their trials for the thinnest of reasons. Montana law does not provide for a time limit for felony or misdemeanor prosecutions. 95-1906, R.C.M. 1947 provides that the incarcerated be brought to trial before those on bail and 95-1708, R.C.M. 1947 allows the court to order continuances in the interest of justice.

STANDARD 4.5

TIME LIMITS IN WHICH A DEFENDANT SHOULD BE BROUGHT TO TRIAL ARE AS FOLLOWS:

1. FELONIES - 60 DAYS FROM THE ARREST, RECEIPT OF SUMMONS OR CITATION, OR FILING OF AN INDICTMENT OR INFORMATION, WHICHEVER COMES FIRST.
2. MISDEMEANORS - 30 DAYS FROM THE FILING OF AN INDICTMENT OR COMPLAINT.
3. FOR FELONIES, 60 DAYS FROM A DECLARATION OF A MISTRIAL OR ORDER FOR A NEW TRIAL.

IMPLEMENTATION

1. Legislation should be enacted to include the above time limits to expedite criminal trials and minimize pretrial detention.
2. As an objective to be achieved by 1978, sufficient resources should be available so that the time limits would not exceed those in the above standard.

CROSS-REFERENCE STANDARD

Courts Standard 4.1, "Time Frame for Prompt Processing in Criminal Cases."

COUNCIL ACTION: The council rejected this standard in favor of Courts Task Force Standard 4.1 as they felt it did not cover the topic area as well.

PRETRIAL DETENTION PROCESS PLANNING

ADOPTED

TASK FORCE FINDINGS

Montana has a critical need for a plan for a more effective and realistic pretrial process program. A good pretrial process plan should prevent officials from groping in the dark for better methods to process offenders.

PROBLEM: Montana's criminal justice system does not collect statistics which would support rational pretrial release decisions. In an attempt to partially solve this problem, an Offender Based Transaction System (OBTS) will be introduced soon. It shows the disposition of an offender and the amount of time he spent in different parts of the criminal justice system. The OBTS and the following standard are complementary because the standard requests information supplied by this data system.

RECOMMENDATION 4-A

EACH DISTRICT COURT AND SHERIFF SHOULD BEGIN TO DEVELOP A COMPREHENSIVE PLAN FOR IMPROVING THE PRETRIAL DETENTION PROCESS.

IMPLEMENTATION

1. The comprehensive plan for the pretrial process should be devised by a group representing all major components of the criminal justice system that operate in the pretrial area. Included should be representatives of the police, sheriffs, defense, prosecution, judiciary, court management, probation, corrections and the community.
2. The comprehensive plan for the pretrial process should include the following:
 - a. Assessment of the status of programs and facilities relating to pretrial release and detention.
 - b. A plan for improving the programs and facilities relating to pretrial release and detention, including priorities for implementation of the recommendations in this chapter.
 - c. A means of implementing the plan and of discouraging the expenditure of funds for, or the continuation of, programs inconsistent with it.
 - d. A method of evaluating the extent and success of implementation of the improvements.

3. For planning purposes, the following information should be available:
- a. The length of pretrial detention, including the number of detainees, the number of man-days of detention by time periods.
 - b. The cost of pretrial release programs and detention.
 - c. The disposition of persons awaiting trial including the number released on bail, released on non-financial conditions, and detained.
 - d. The disposition of such persons after trial including, for each form of pretrial release or detention, the number of persons who were convicted, who were sentenced to the various available sentencing alternatives, and whose cases were dismissed.
 - e. Effectiveness of pretrial conditions, including the number of releasees who:
 - a. Failed to appear,
 - b. Violated conditions of their release,
 - c. Were arrested during the period of their release, or
 - d. Were convicted during the period of their release.
 - f. Conditions of local detention facilities, including the extent to which they meet recommended standards.
 - g. Conditions of treatment and rules governing persons awaiting trial including the extent to which such treatment and rules meet the recommendations in 4-C and 4-D.
 - h. The need for and availability of resources that could be effectively utilized for persons awaiting trial. This includes the number of arrested persons suffering from problems relating to alcohol, narcotic addiction, physical or mental disease or defects and the extent to which community treatment programs are available.
 - i. The length of time required for bringing a criminal case to trial and where such delay is found to be excessive and the factors causing such delay.

CROSS REFERENCE STANDARD

Information Systems Standard 4.2, "Pretrial Offender Status."

COUNCIL ACTION: Adopted as written.

PROCEDURES RELATING TO PRETRIAL RELEASE AND DETENTION DECISIONS

ADOPTED

TASK FORCE FINDINGS

If decisions are to be made concerning pretrial release or detention as in Standard 4.4, "Alternatives to Pretrial Detention," it then follows that procedures must be established to help officials make informed decisions about who should be released or detained before trial. PROBLEM: There are no guidelines for making pretrial release and detention decisions.

RECOMMENDATION 4-B

THE FOLLOWING PROCEDURES SHOULD BE DEVELOPED GOVERNING PRETRIAL RELEASE AND DETENTION DECISIONS:

1. WHEN A LAW ENFORCEMENT AGENCY DECIDES TO TAKE A PERSON ACCUSED OF CRIME INTO CUSTODY, IT SHOULD, WITHOUT UNNECESSARY DELAY, NOTIFY THE APPROPRIATE JUDICIAL OFFICER OR AGENCY. TO GATHER INFORMATION RELEVANT TO THE PRETRIAL RELEASE OR DETENTION DECISION, THE INVESTIGATION SHOULD BE FLEXIBLE AND GENERALLY EXPLORATORY IN NATURE. IT SHOULD PROVIDE INFORMATION ABOUT THE ACCUSED, INCLUDING:
 - a. CURRENT JOB STATUS AND EMPLOYMENT HISTORY.
 - b. PRESENT RESIDENCE AND LENGTH OF STAY AT SUCH ADDRESS.
 - c. EXTENT AND NATURE OF FAMILY RELATIONSHIPS.
 - d. GENERAL REPUTATION AND CHARACTER REFERENCES.
 - e. PRESENT CHARGES AGAINST THE ACCUSED AND PENALTIES POSSIBLE UPON CONVICTION.
 - f. LIKELIHOOD OF GUILT OR WEIGHT OF EVIDENCE AGAINST THE ACCUSED.
 - g. PRIOR CRIMINAL RECORD.
 - h. PRIOR RECORD OF COMPLIANCE WITH OR VIOLATION OF PRETRIAL RELEASE CONDITIONS.
 - i. OTHER FACTS RELEVANT TO THE LIKELIHOOD THAT HE WILL APPEAR FOR TRIAL.
2. PRETRIAL DETENTION OR CONDITIONS SUBSTANTIALLY INFRINGING ON LIBERTY SHOULD NOT BE IMPOSED ON A PERSON ACCUSED OF CRIME UNLESS:
 - a. THE JUDICIAL OFFICER FINDS SUBSTANTIAL EVIDENCE THAT CONFINEMENT OR RESTRICTIVE CONDITIONS ARE NECESSARY TO INSURE THE PRESENCE OF THE ACCUSED FOR TRIAL.
 - b. THE JUDICIAL OFFICER PROVIDES THE DEFENDANT WITH A WRITTEN STATEMENT OF HIS FINDINGS OF FACT, THE REASONS FOR IMPOSING DETENTION OR CONDITIONS, AND THE EVIDENCE RELIED UPON.

3. WHENEVER A DEFENDANT IS RELEASED PENDING TRIAL SUBJECT TO CONDITIONS, HIS RELEASE SHOULD NOT BE REVOKED UNLESS:
 - a. A JUDICIAL OFFICER FINDS AFTER A HEARING THAT THERE IS SUBSTANTIAL EVIDENCE OF A WILLFUL VIOLATION OF ONE OF THE CONDITIONS OF HIS RELEASE OR THERE IS FOUND PROBABLE CAUSE TO BELIEVE THE DEFENDANT HAS COMMITTED A SERIOUS CRIME WHILE ON RELEASE.
 - b. THE VIOLATION OF CONDITIONS INVOLVE A RISK OF NONAPPEARANCE OR OF CRIMINAL ACTIVITY.
 - c. THE JUDICIAL OFFICER PROVIDES THE DEFENDANT WITH A WRITTEN STATEMENT OF THE FINDINGS OF FACT, THE REASONS FOR THE REVOCATION AND THE EVIDENCE RELIED UPON.
4. THE JUDICIAL OFFICER OR THE REVIEWING COURT SHOULD BE AUTHORIZED TO IMPOSE DIFFERENT OR ADDITIONAL CONDITIONS IN LIEU OF REVOKING THE RELEASE AND DETAINING THE DEFENDANT.

IMPLEMENTATION

1. District court judges and justice of the peace should implement this recommendation.
2. The defendant should be granted notice of the alleged offense, access to official records regarding his case, the right to be represented by counsel (appointed counsel if he is indigent), to subpoena witnesses in his own behalf and to confront and cross-examine witnesses against him. This is already being done in Montana under 95-1107 and 95-111, R.C.M., 1947.

COUNCIL ACTION: Adopted as written.

RIGHTS OF PRETRIAL DETAINEES

ADOPTED

TASK FORCE FINDINGS

Pretrial detainees must be treated separately from convicted offenders because of their special status. According to law they must be assumed innocent until proven guilty. Because of their special status, they should be given certain rights, such as separation from the convicted, while they are awaiting trial. For those who may be found innocent, this may prevent them from becoming influenced by a convicted offender. The period of pretrial detention is generally too short to allow detainees to seek their rights through litigation.

RECOMMENDATION 4-C

A DETAINED PERSON'S RIGHTS SHOULD NOT BE
INFRINGED UPON ANY MORE THAN NECESSARY TO
ENSURE DETENTION.

IMPLEMENTATION

All local law enforcement agencies should insure the rights of pretrial detainees.

COUNCIL ACTION: Adopted as written.

PROGRAMS FOR PRETRIAL DETAINEES

ADOPTED

TASK FORCE FINDINGS

Persons in pretrial detention have not been found guilty of a crime. Therefore, educational, vocational and recreational programs should be made available to those that are interested.

RECOMMENDATION 4-D

THE FOLLOWING POLICIES REGARDING PROGRAMS FOR PRETRIAL DETAINEES SHOULD BE DEVELOPED:

1. PERSONS AWAITING TRIAL IN DETENTION SHOULD NOT BE REQUIRED TO PARTICIPATE IN ANY PROGRAM OF WORK, TREATMENT, OR REHABILITATION, EXCEPT EMERGENCY MEDICAL TREATMENT THAT MAY BE REQUIRED BY QUALIFIED MEDICAL PERSONAL. THE FOLLOWING PROGRAMS AND SERVICES SHOULD BE AVAILABLE ON A VOLUNTARY BASIS FOR PERSONS AWAITING TRIAL UNLESS THEY ARE NECESSARY FOR THE PHYSICAL WELL BEING OF THE OFFENDER AND OTHERS:
 - a. EDUCATIONAL, VOCATIONAL AND RECREATIONAL PROGRAMS.
 - b. TREATMENT PROGRAMS FOR PROBLEMS ASSOCIATED WITH ALCOHOLISM, DRUG ADDICTION AND MENTAL OR PHYSICAL DISEASE OR DEFECTS.
 - c. COUNSELING PROGRAMS FOR PROBLEMS ARISING FROM MARITAL, EMPLOYMENT, FINANCIAL OR SOCIAL RESPONSIBILITIES.
2. PARTICIPATION IN VOLUNTARY PROGRAMS SHOULD BE ON A CONFIDENTIAL BASIS, AND THE FACT OF PARTICIPATION OR STATEMENTS MADE DURING SUCH PARTICIPATION SHOULD NOT BE USED IN TRIAL. INFORMATION ON PARTICIPATION AND PROGRESS IN SUCH PROGRAMS SHOULD BE AVAILABLE TO THE SENTENCING JUDGE FOLLOWING CONVICTION FOR THE PURPOSE OF DETERMINING SENTENCE.

IMPLEMENTATION

All local law enforcement agencies should implement this recommendation.

COUNCIL ACTION: Adopted as written.

SENTENCING



CHAPTER 5 - OVERVIEW

SENTENCING

TO ASSURE EQUITABLE AND EFFECTIVE SENTENCING PRACTICES IN MONTANA

At first glance, "sentencing" may strike the reader as an inappropriate topic in a report on corrections. However, the courts have a direct impact on corrections, for it is the sentence that sends most offenders into the correctional system. Furthermore, criminal justice should be viewed as a continuum of processes, sanctions and programs involving the offender. This chapter is presented in the spirit of cooperation between different components of Montana's criminal justice system, with the hope that it will be adopted by the legislature and courts. These standards should serve to improve the judge's most difficult and frustrating decision--the sentence.

Montana court judges are fortunate to have wide latitude in sentencing alternatives. The proper exercise of judicial discretion recognizes that offenders must be treated individually and not as automatons stamped out on a production line. But many judges have agonized over sentencing, and it is with this in mind that this chapter is presented.

Sentencing was swift and certain in Montana's frontier days. Indeed, one of the Vigilante's by-laws read: "The only punishment that shall be inflicted by this committee is death."¹

The first court trial in Helena occurred in 1865, where a jury found a man guilty of second degree murder. The sentence was imprisonment at the federal prison in Virginia City, but the murderer was pardoned by Acting Governor Meagher and returned to Helena to seek revenge on the witnesses who testified against him. "In less than an hour his body was swinging from a limb of the famous "hangman's tree."² In the gold rush days, Montana's miner's court judges had few sentencing alternatives at their disposal:

Sentences were clear-cut and simple. Since there were no prisons and, indeed, few effective jails, punishment seldom involved incarceration. The miscreant was either flogged (which was rare), banished (which was common),³ or hanged (which, for a time, was predominant).

Montana's wild west is now in the pages of history books, and sentencing is no longer the abrupt process it was in the past century. The last hanging was in Missoula in 1943.

Sentencing is probably the most difficult decision that judges face, because they are generally trained only as attorneys and they have little experience in the behavioral sciences. They are far more comfortable in their role of supervising court proceedings, preserving due process of the law and ensuring a speedy trial. Many judges feel uneasy when it comes to sentencing. Judge Craven, of the Fourth Circuit Court of Appeals, has stated: "All of my judicial life I have wished for precision in sentencing, and it eludes me. It seems to me incongruous that trial court judges, without either training or experience in penology, are afforded finality in the

determination of punishment."⁴ If the standards proposed here are implemented, they may provide firm direction to sentencing in Montana. Much of the implementation is directed at the Supreme Court, which has rule-making authority for the district courts. Some of the standards, where indicated, are appropriate for the lower courts and probation officers.

For sentencing to become more credible to the public and the offender, the reasons for a particular sentence should be recorded. Public explanation of an imposed sentence should increase understanding and appreciation of a court's duties and intentions.

The ABA's standards, and the National Council on Crime and Delinquency's Model Sentencing Act propose that most sentences be no more than five years.⁵ This reflects the thrust of Standard 5.2, "Sentencing the Nondangerous Offender." Despite the public's cry for longer sentences, the sureness and swiftness of punishment is a far greater deterrent to crime than the harshness of the sentences. America has the toughest sentences in the Western World,⁶ yet crime steadily increases each year. Long sentences may not be the answer for most offenders. Successful reintegration into the community is a more realistic solution than lengthy sentences which should be reserved for the persistent, dangerous or professional criminal. Furthermore, studies have shown that, "There is no relation between the sentencing practices in various states and the amount of reported crime in these states."⁷ For these

reasons, Standard 5.2, along with the maximum of a five-year sentence (except for murder), lists a wide range of sentencing alternatives. These should aid a judge in his critical decision as to what is the best sentence considering the interests of the public and the disposition of the nondangerous offender.

For the criminal who society cannot control in any other way, there is Standard 5.3, "Sentencing to Extended Terms." It states that the persistent felon and the dangerous or professional criminal be subject to sentences of up to 25 years. Another provision in this standard authorizes the sentencing judge to recommend to the parole board a minimum amount of time to be served before the offender is eligible for parole. Persistent, dangerous and professional offenders are defined in the standard so there is no question as to their identity.

Sentencing to probation has become increasingly prevalent in Montana under deferred imposition of sentence and the suspended sentence. This trend should continue because probation in many cases affords the greatest opportunity for reintegration into the community. Standard 5.4, "Probation," provides for the prompt confinement of an offender who poses a danger to himself or society.

Fines are preferable for certain offenders in specific circumstances, but they clearly discriminate against the poor, who obviously do not have the money to pay large fines. It is

therefore stated in Standard 5.5 that the legislature should eliminate provisions that allow offenders to work off \$10 of a fine for each day in jail.

Under state law (94-2-112, R.C.M. 1947) corporations may be prosecuted for misdemeanors or crimes defined by statutes that clearly indicate a "legislative purpose to impose liability on a corporation." Because corporations are subject to criminal penalties, Standard 5.5 also calls for fines based on sales, profits or the net annual income of a corporation. Persons are legally accountable for their conduct committed in the name of a corporation (94-2-113, R.C.M. 1947). This is reaffirmed by the standard, which states that the court may proceed against corporate assets or the officers if the corporation refuses to pay the fine.

In the quest for judicial familiarization with Montana's correctional institutions, Standard 5.10 asserts that a judge should visit all of Montana's institutions in the first year after taking office. This standard brings to light a definite need for all judges to visit the jails and institutions to which they send juvenile and adult offenders. Knowledge of an institution should lead to wiser sentencing decisions because a judge will know where he is sending an offender and what correctional resources are available.

Credit for time served in pre-trial detention should be granted and subtracted from the sentence, as provided for

in Standard 5.8. Time spent under supervision should be considered by the court in its sentence.

The task force reaffirms the present practice of sentence review by the sentence review board to ensure equity in district court sentences.

To lend further support to better sentencing decisions, two standards cover the requirements for the preparation and disclosure of the presentence report. Two reports are recommended -- a full and short-form report. The full report should be used whenever an offender may be sentenced to prison for five or more years. The short-form should be used in all other cases. This means that presentence reports will have to be used in the lower courts as well as the district courts. Disclosure of the report to the defense should be mandatory at all times.

See the addendum for sentencing standards in the minority report.

REFERENCES

1. James McClellan Hamilton, History of Montana (Portland: Binford and Mort, 1970).
2. James Daniels, Vigilante Days and Ways (Portland: Binford and Mort), p. 324.
3. K. Ross Toole, Montana, An Uncommon Land (Norman: University of Oklahoma Press, 1959), pp. 76-7.
4. Chris A. Korbakes, "Criminal Sentencing: Should the Judge's 'Sound Discretion' Be Explained?" Judicature (November, 1975), 186.
5. Ohio State University, Standards and Goals Comparison Project (Columbus: Program for the Study of Crime and Delinquency, March 31, 1974), pp. 50-1.
6. NACCJS&G, Corrections, p. 151.
7. Ronald L. Goldfarb and Linda R. Singer After Conviction (New York: Simon and Shuster, 1973), pp. 182-3.

SENTENCING THE NONDANGEROUS OFFENDER

AMENDED
ADOPTEDTASK FORCE FINDINGS

In-depth studies have shown there is no relationship between length of time served and successful rehabilitation.¹ In many cases needless hardship and expense are imposed by long sentences. Deterrence is generally used as an argument for lengthy sentences, but it is the considered opinion of experts that harsh sentences do not deter criminal activity.² Many people feel long sentences meted out punitively will discourage most criminals, when in fact: "There is no relation between the sentencing practices in various states and the amount of reported crime in those states."³ Montana should avoid sentencing non-dangerous felons to more than five years in the interest of economy and more effective corrections.

STANDARD 5.1

1. THE MAXIMUM SENTENCE FOR ANY FIRST OFFENDER, NOT SPECIFICALLY FOUND TO REPRESENT A SUBSTANTIAL DANGER TO OTHERS, SHOULD NOT EXCEED FIVE YEARS FOR FELONIES OTHER THAN MURDER.
2. IN SENTENCING NON-DANGEROUS FIRST OFFENDERS, THE LEAST DRASTIC OF THE FOLLOWING SENTENCING ALTERNATIVES SHOULD BE UTILIZED BY THE COURTS CONSISTENT WITH PUBLIC SAFETY AND THE REHABILITATION OF THE OFFENDER:
 - a. UNCONDITIONAL RELEASE .
 - b. CCNDITIONAL RELEASE, INCLUDING RESTITUTION WHERE APPROPRIATE.*
 - c. A FINE.
 - d. RELEASE UNDER SUPERVISION IN THE COMMUNITY.
 - e. SENTENCE TO A HALFWAY HOUSE OR OTHER RESIDENTIAL FACILITY LOCATED IN THE COMMUNITY.
 - f. SENTENCE TO PARTIAL CONFINEMENT WITH LIBERTY TO WORK OR PARTICIPATE IN TRAINING OR EDUCATION
 - g. TOTAL CONFINEMENT IN A CORRECTIONAL FACILITY .
 - h. FLAT TERM SENTENCING WITHOUT OPPORTUNITY FOR GOOD TIME OR PAROLE.

THE PROVISIONS OF SECTION 95-2206, R.C.M. 1947, AS AMENDED BY THE 1975 LEGISLATURE, ARE SPECIFICALLY APPROVED.

*THE OFFENDER COULD BE MADE TO COMPENSATE THE VICTIM THROUGH A CIVIL ACTION IF THE VICTIM IS FOUND WITHOUT FAULT BY THE SENTENCING JUDGE OR JURY. THIS WOULD REQUIRE LEGISLATION.

3. THE FOLLOWING FACTORS, IF PRESENT, SHOULD BE WEIGHED BY THE COURTS WHEN CONSIDERING ALTERNATIVES TO INCARCERATION:
 - a. THE OFFENDER'S CRIMINAL CONDUCT NEITHER CAUSED, NOR ACTUALLY THREATENED, SERIOUS HARM.
 - b. THE OFFENDER DID NOT THINK OR INTEND THAT HIS CRIMINAL CONDUCT WOULD CAUSE OR THREATEN SERIOUS HARM.
 - c. THE OFFENDER ACTED UNDER STRONG PROVOCATION.
 - d. THERE WERE SUBSTANTIAL GROUNDS TENDING TO EXCUSE OR JUSTIFY THE OFFENDER'S CRIMINAL CONDUCT, THOUGH FAILING TO ESTABLISH DEFENSE.
 - e. THE OFFENDER HAD LED A LAW-ABIDING LIFE FOR A SUBSTANTIAL PERIOD OF TIME BEFORE COMMITTING THE CRIME.
 - f. THE OFFENDER IS LIKELY TO RESPOND TO PROBATION OR OTHER COMMUNITY SUPERVISION POSITIVELY.
 - g. THE VICTIM OF THE CRIME INDUCED OR FACILITATED ITS COMMISSION.
 - h. THE OFFENDER HAS MADE OR WILL MAKE RESTITUTION OR REPARATION TO THE VICTIM OF HIS CRIME FOR THE DAMAGE OR INJURY WHICH WAS SUSTAINED.
 - i. THE OFFENDER'S CONDUCT WAS THE RESULT OF CIRCUMSTANCES UNLIKELY TO RECUR.
 - j. THE CHARACTER, HISTORY, AND ATTITUDES OF THE OFFENDER INDICATE THAT HE IS UNLIKELY TO COMMIT ANOTHER CRIME.
 - k. IMPRISONMENT OF THE OFFENDER WOULD ENTAIL UNDUE HARDSHIP TO DEPENDENTS.
 - l. THE OFFENDER IS ELDERLY OR IN POOR HEALTH.
 - m. THE CORRECTIONAL PROGRAMS WITHIN THE INSTITUTIONS TO WHICH THE OFFENDER WOULD BE SENT ARE INAPPROPRIATE TO HIS PARTICULAR NEEDS OR WOULD NOT LIKELY BE OF BENEFIT TO HIM.

IMPLEMENTATION

1. The legislature should limit sentences of nondangerous, first offenders to five years.
2. The courts, by rule or otherwise, should consider the criteria set forth in B and C above, in sentencing nondangerous offenders.

REFERENCES

1. Ronald L. Goldfarb and Linda R. Singer, After Conviction (New York: Simon and Schuster, 1973), p. 182.
2. Ibid.
3. Ibid., p. 183

COUNCIL ACTION:

The council felt this standard should be aimed at first-time offenders and not necessarily all offenders in general, thus they inserted the words "first" in subsections 1 & 2. The council also added subsection 2.h, which reads "flat term sentencing without opportunity for good time or parole." The standard was then adopted.

SENTENCING TO EXTENDED TERMS

REJECTED

TASK FORCE FINDINGS

While extended sentences are not generally an effective means of correction (see standard 5.1), such sentences are indicated and should be imposed in cases where the presence of the offender in society poses a clear and present threat to public safety. The sentencing judge should not only be permitted to impose such sentences but his written recommendation to the parole authorities for extended incarceration should be given serious consideration.

STANDARD 5.2

1. AUTHORITY TO SENTENCE SHOULD BE FOR NOT MORE THAN 25 YEARS, EXCEPT FOR MURDER, WHEN THE COURT FINDS THE INCARCERATION OF THE DEFENDANT FOR A TERM LONGER THAN FIVE YEARS IS REQUIRED FOR THE PROTECTION OF THE PUBLIC AND THAT THE DEFENDANT IS A PERSISTENT FELONY OFFENDER, A PROFESSIONAL CRIMINAL, OR A DANGEROUS OFFENDER.
2. SENTENCING OF PERSISTENT FELONY OFFENDERS IS NOW PROVIDED FOR IN 95-1507, R.C.M. 1947 AND IS APPROVED.
3. A PROFESSIONAL CRIMINAL IS A PERSON WHO STANDS CONVICTED OF A FELONY THAT WAS COMMITTED AS PART OF A CONTINUING ILLEGAL BUSINESS IN WHICH HE ACTED WITH OTHERS IN A POSITION OF MANAGEMENT, OR WAS AN EXECUTOR OF VIOLENCE. AN OFFENDER SHOULD NOT BE FOUND TO BE A PROFESSIONAL CRIMINAL UNLESS HE MAKES A SUBSTANTIAL INCOME FROM CRIME.
4. A DANGEROUS OFFENDER IS A PERSON WHOSE CRIMINAL CONDUCT IS FOUND BY THE COURT TO BE:
 - a. A PATTERN OF REPETITIVE BEHAVIOR WHICH IS A SERIOUS THREAT TO THE SAFETY OF OTHERS,
 - b. A PATTERN OF PERSISTENT AGGRESSIVE BEHAVIOR WITH HEEDLESS INDIFFERENCE TO THE CONSEQUENCES, OR
 - c. A PARTICULARLY HEINOUS OFFENSE INVOLVING THE THREAT OR INFLECTION OF SERIOUS BODILY INJURY.
5. AUTHORITY FOR THE SENTENCING COURT TO RECOMMEND TO THE PAROLE BOARD AT THE TIME OF SENTENCING THAT THE OFFENDER NOT BE PAROLED UNTIL A GIVEN PERIOD OF TIME HAS BEEN SERVED.

IMPLEMENTATION

The 1977 session of the Montana Legislature should enact provisions for sentencing offenders when, in the interest of the public protection, it is considered necessary to incapacitate them for substantial periods of time.

COUNCIL ACTION: This standard was rejected in favor of Courts Task Force Standard 5.2.

PROBATION

AMENDED
ADOPTEDTASK FORCE FINDINGS

Section 1 of the Model Sentencing Act, implemented by Section 95-2201, R.C.M. 1947, provides: "...dangerous offenders shall be correctively treated in custody for long terms as needed; ...other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual." Probation has become a major sentencing disposition in Montana. There has been a state-wide increase of nearly 50% in probationers in just two years, as the numbers grew from 851 in 1973¹ to 1286 in 1975². It is therefore imperative that Montana adopt standardized procedures for probation. It is a consensus of the task force that due process in probation currently afforded to juveniles be maintained.

STANDARD 5.3

1. THERE SHOULD BE STATUTORY PROHIBITION AGAINST EXTENSION OF PROBATION BEYOND THE MAXIMUM SENTENCE PRESCRIBED BY LAW FOR THE CRIME COMMITTED.
2. PROBATION SHOULD BE FOR A SPECIFIC TERM.
3. REGULATIONS SHOULD BE PROMULGATED AND ADOPTED BY THE CORRECTIONS DIVISION PROVIDING:
 - a. PROMPT CONFINEMENT OF PROBATIONERS WHO ARE A SERIOUS THREAT TO THEMSELVES OR OTHERS.
 - b. AUTHORIZATION TO ALLOW PROBATIONERS SUSPECTED OF LESS SERIOUS VIOLATIONS TO REMAIN IN THE COMMUNITY UNTIL FURTHER PROCEEDINGS ARE COMPLETED.
 - c. PRELIMINARY DETERMINATION BY A NEUTRAL PARTY THAT THERE IS PROBABLE CAUSE FOR REVOCATION, UNLESS SUCH PRELIMINARY DETERMINATION IS WAIVED. AT SUCH A HEARING, THE PROBATIONER SHALL BE ASSURED OF THE FOLLOWING RIGHTS:
 - (1) NOTICE OF HEARING AND OF ALLEGED VIOLATIONS.
 - (2) TO BE HEARD AND TO SUBMIT EVIDENCE.
 - (3) CONFRONT AND QUESTION WITNESSES.
 - (4) REPRESENTATION BY PRIVATE OR COURT-APPOINTED COUNSEL.
 - (5) TO BE PRESENT AT ALL STAGES OF THE PROCEEDING.
 - (6) TO BE ADVISED OF THE REASON FOR THE DECISION.
4. WHERE PROBABLE CAUSE IS DETERMINED, A FULL DUE PROCESS HEARING BEFORE THE SENTENCING COURT SHOULD BE HELD AND FINAL DETERMINATION AND DISPOSITION MADE, UNLESS SUCH HEARING BE WAIVED.
5. LEGISLATION SHOULD SPECIFICALLY AUTHORIZE MISDEMEANANT PROBATION, ALTHOUGH SECTION 95-2206, R.C.M. 1947, DOES NOT DISALLOW IT.

IMPLEMENTATION

1. Adoption of appropriate regulations and legislation as indicated.
2. This standard should be implemented by the lower courts for misdemeanor probation.

REFERENCES

1. Board of Pardons, Annual Report (July 11, 1973)
2. Board of Pardons, Annual Report (Fiscal Year, 1975)

COUNCIL ACTION:

No substantive changes were made in this standard. The word "hearing" in subsection 3c was changed to "determination" to clarify the intent. The standard was then adopted.

FINES

ADOPTED

TASK FORCE FINDINGS

A fine can be a productive sentencing alternative, especially if it is imposed justly as a substitute for the incarceration of selected offenders. Like all sentences, it should be a correctional tool, and related to the crime and offender. Used indiscriminately, fines may become counterproductive, especially upon the poor. The U.S. Supreme Court ruled in 1971 that jailing people because they cannot pay a fine is unjust discrimination.¹ For fines to become more practical and realistic, the standard states that legal provisions be made to allow time payments. This would allow offenders to pay their fines as they would any other debts. If the criminal justice system is to become credible in the eyes of the public, it cannot have one set of standards for the rich and another for the poor. Obviously wealthy offenders are able to pay fines, and the poor cannot. Appropriate fines against corporations that break the law might deter future offenses. To be effective, however, a fine would have to be commensurate with net profits, with the authority to garnish assets or file suit against a corporate officer. A mild and ineffectual punishment might not discourage corporate crime.

STANDARD 5.4

1. A FINE SHOULD BE IMPOSED WHEN:
 - a. IT APPEARS TO BE A DETERRENT OR THE SUITABLE SANCTION FOR AN OFFENDER.
 - b. THE OFFENDER CAN PAY WITHOUT UNDUE HARDSHIP.
 - c. IT WILL NOT INTERFERE WITH RESTITUTION TO THE VICTIM.
2. LEGISLATION ON FINES SHOULD ALLOW:
 - a. INSTALLMENT PAYMENTS.
 - b. A FINE TO BE REVOKED IN WHOLE OR PART WHEN IT CAUSES UNDUE HARDSHIP TO THE DEFENDANT OR OTHERS.
 - c. A PROHIBITION AGAINST A JAIL SENTENCE IF A FINE CANNOT BE PAID, SUCH AS \$30 OR 3 DAYS.
 - d. FOR THE IMPRISONMENT OF ONE WHO INTENTIONALLY FAILS TO PAY A FINE OR DOES NOT MAKE AN HONEST ATTEMPT TO GET THE MONEY. IMPRISONMENT SOLELY FOR INABILITY TO PAY A FINE SHOULD NOT BE AUTHORIZED.

3. LEGISLATION AUTHORIZING FINES AGAINST CORPORATIONS SHOULD ALLOW THE COURT TO:
 - a. BASE FINES ON SALES, PROFITS, OR NET ANNUAL INCOME OF A CORPORATION WHERE IT IS PROPER TO ASSURE A REASONABLY EVEN IMPACT ON DEFENDANTS OF VARIOUS MEANS.
 - b. PROCEED AGAINST CORPORATE OFFICERS OR CORPORATE ASSETS WHEN THE FINE IS NOT PAID.

IMPLEMENTATION

1. Legislation is required to carry out provisions #2 and #3 of the standard.
2. District court and city judges and justices of the peace should follow #1 when considering fines as a sentence.

REFERENCE

1. Tate v. Short, 401 U.S. 395 (1971).

COUNCIL ACTION: Adopted as written.

MULTIPLE SENTENCES

REJECTED

TASK FORCE FINDINGS

The American Bar Association (ABA) states that, "Consecutive sentences are rarely appropriate".¹ It also recommends that multiple sentences of imprisonment imposed by different states be served at one time and under one correctional authority.² It is generally productive under most conditions to sentence an offender to concurrent multiple terms, unless the purpose is the removal of a dangerous offender from society.

STANDARD 5.5

1. THE SENTENCING COURT SHOULD HAVE STATUTORY AUTHORITY TO ALLOW A DEFENDANT TO PLEAD GUILTY TO ANY OTHER OFFENSE HE HAS COMMITTED WITHIN MONTANA, IF THE PROSECUTOR, IN THE JURISDICTION WHERE THE CRIME WAS COMMITTED, AGREES AND IF THE PLEA IS MADE VOLUNTARILY. THE COURT SHOULD TAKE EACH OF THESE OFFENSES INTO ACCOUNT IN SETTING THE SENTENCE. THEREAFTER, THE DEFENDANT SHOULD NOT BE HELD FURTHER ACCOUNTABLE FOR THE CRIMES TO WHICH HE HAS PLEADED GUILTY.
2. WHEN APPRISED OF EITHER PENDING CHARGES OR OUTSTANDING DETAINERS AGAINST THE DEFENDANT IN OTHER JURISDICTIONS, THE COURT SHOULD BE GIVEN, BY INTRA-STATE AGREEMENTS, THE AUTHORITY TO ALLOW THE DEFENDANT TO PLEAD TO THOSE CHARGES AND TO BE SENTENCED AS PROVIDED FOR IN CASES OF INTRA-STATE CRIMINAL ACTIVITY.

IMPLEMENTATION

Appropriate legislation should be enacted by the 1977 legislature.

REFERENCES

1. Larry M. Elison, Comparative Analysis of the American Bar Association with Montana Law, Rules and Practice (1975), p. 183.
2. Op. cit., p. 184.

COUNCIL ACTION:

This standard was rejected in favor
of Courts Task Force Standard 5.3.

CREDIT FOR TIME SERVED

ADOPTED

TASK FORCE FINDINGS

Fairness and impartiality, as well as Montana law,¹ dictate that time spent in jail awaiting trial, sentencing or appeal, be credited against a sentence for a bailable offense. Increasingly, courts throughout the nation are ruling that a refusal to credit an offender's sentence with time served is a violation of the equal protection and due process provisions of the U.S. Constitution.² And the Montana Supreme Court has ruled that credit should be granted for time spent in jail.³ All incarcerated offenders should receive credit for all offenses, bailable or not. Section 95-2215, stipulates that credit be given only for bailable offenses.

STANDARD 5.6

SENTENCING COURTS SHOULD GIVE CREDIT TO DEFENDANTS FOR TIME SPENT IN CUSTODY AND "GOOD TIME" EARNED UNDER THE FOLLOWING CIRCUMSTANCES:

1. TIME SPENT IN CUSTODY PRIOR TO TRIAL, SENTENCING, TRANSPORTATION TO THE CORRECTIONAL FACILITY AND PENDING APPEAL.
2. WHERE AN OFFENDER IS SERVING MULTIPLE SENTENCES, EITHER CONCURRENT OR CONSECUTIVE, AND HE VOIDS ONE OF THE SENTENCES, TIME SPENT IN CUSTODY SHOULD BE CREDITED AGAINST THE REMAINING SENTENCE.
3. WHERE AN OFFENDER SUCCESSFULLY CHALLENGES HIS CONVICTION AND IS RETRIED AND RESENTENCED, ALL TIME SPENT IN CUSTODY ARISING OUT OF THE FORMER CONVICTION AND TIME SPENT IN CUSTODY AWAITING THE RETRIAL SHOULD BE CREDITED AGAINST ANY SENTENCE IMPOSED FOLLOWING THE RETRIAL.

THE COURT SHOULD ASSUME THE RESPONSIBILITY FOR ASSURING THAT THE RECORD REVEALS IN ALL INSTANCES THE AMOUNT OF TIME TO BE CREDITED AGAINST THE OFFENDER'S SENTENCE AND THAT SUCH RECORD IS DELIVERED TO THE CORRECTIONAL AUTHORITIES. THE CORRECTIONAL AUTHORITIES SHOULD ASSUME THE RESPONSIBILITY OF GRANTING ALL CREDIT DUE AN OFFENDER AT THE EARLIEST POSSIBLE TIME AND OF NOTIFYING THE OFFENDER THAT SUCH CREDIT HAS BEEN GRANTED.

CREDIT SHOULD BE AUTOMATIC AND A MATTER OF RIGHT AND NOT SUBJECT TO THE DISCRETION OF THE SENTENCING COURT OR THE CORRECTIONAL AUTHORITIES. THE GRANTING OF CREDIT SHOULD NOT DEPEND ON SUCH FACTORS AS THE OFFENSE COMMITTED OR THE NUMBER OF PRIOR CONVICTIONS. TIME SPENT UNDER SUPERVISION (in pretrial intervention projects, informal probation) PRIOR TO TRIAL SHOULD BE CONSIDERED BY THE COURT IN IMPOSING SENTENCE. THE COURT SHOULD BE AUTHORIZED TO GRANT THE OFFENDER CREDIT IN AN AMOUNT TO BE DETERMINED IN THE DISCRETION OF THE COURT, DEPENDING ON THE LENGTH AND INTENSITY OF SUCH SUPERVISION.

IMPLEMENTATION

1. 95-2215, R.C.M. 1947 should be amended to insure credit for all offenses.
2. The Montana Supreme Court should immediately adopt a policy for all district courts to grant credit for time served in accordance with this standard.
3. Montana's lower courts should credit time according to this standard.

REFERENCE

1. 95-2215, R.C.M. 1947.
2. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (U.S. Government Printing Office: Washington, D.C., 1973), p. 171.
3. In Re Hanson 33 St. Rep. 70.

COUNCIL ACTION: Adopted as written.

JUDICIAL VISITS TO INSTITUTIONS

ADOPTED

TASK FORCE FINDINGS

Montana does not have a statute or policy that provides for judges to visit the institutions to which they sentence adult and juvenile offenders. Intelligent sentencing decisions demand that lower and district court judges learn as much as possible about jails and institutions. There is no substitute for firsthand knowledge about the condition and programs of a correctional institution. Hypothetically, a judge may sentence an offender to an institution for rehabilitation and discover during a visit that few rehabilitative programs exist. Judicial visits to correctional institutions and jails should be made mandatory by state law. PROBLEM: Few lower and district court judges have visited the jails and state institutions to which they sentence offenders.

STANDARD 5.7

JUDGES SHOULD BE ACQUAINTED WITH THE CORRECTIONAL FACILITIES AND PROGRAMS TO WHICH THEY SENTENCE OFFENDERS, SO THAT THEY MAY OBTAIN FIRSTHAND KNOWLEDGE OF THE CONSEQUENCES OF THEIR SENTENCING DECISIONS.

1. DURING THE FIRST YEAR OF HIS TENURE, A JUDGE SHOULD VISIT ALL CORRECTIONAL FACILITIES WITHIN HIS JURISDICTION OR TO WHICH HE REGULARLY SENTENCES OFFENDERS.
2. THEREAFTER, HE SHOULD MAKE ANNUAL, UNANNOUNCED VISITS TO ALL SUCH CORRECTIONAL FACILITIES AND SHOULD CONVERSE WITH BOTH CORRECTIONAL STAFF AND COMMITTED OFFENDERS.
3. NO JUDGE SHOULD BE EXCLUDED FROM VISITING AND INSPECTING ANY PART OF ANY FACILITY AT ANY TIME OR FROM TALKING IN PRIVATE TO ANY PERSON INSIDE THE FACILITY, WHETHER OFFENDER OR STAFF.

IMPLEMENTATION

1. The Supreme Court should implement this standard in its Uniform Rules for District Courts.
2. Justices of the peace and city court judges should visit the local jail to better determine which offenders should be incarcerated there.

COUNCIL ACTION: Adopted as written.

SENTENCING INSTITUTES

ADOPTED

TASK FORCE FINDINGS

Sentencing probably causes judges more discomfort and difficulty than any other duty because of their general lack of expertise in this critical area. Sentencing institutes would bring district court judges together every two years to share their knowledge and problems in sentencing. This should reduce sentencing disparity and help judges make better sentencing decisions.

STANDARD 5.8

SENTENCING INSTITUTES SHOULD BE CONDUCTED IN MONTANA TO PROVIDE JUDGES WITH THE INFORMATION THEY NEED TO FULFILL THEIR SENTENCING RESPONSIBILITIES KNOWLEDGEABLY. THE PRACTICE SHOULD BE GOVERNED BY THESE CONSIDERATIONS:

1. A SENTENCING INSTITUTE SHOULD BE HELD EVERY TWO YEARS. ALL SENTENCING JUDGES SHOULD BE REQUIRED TO ATTEND WITHOUT PERSONAL EXPENSE TO THEM.
2. THE INSTITUTE SHOULD CONCERN ITSELF WITH ALL ASPECTS OF SENTENCING. THIS SHOULD INCLUDE DETAILED SENTENCING CRITERIA, ALTERNATIVES TO INCARCERATION AND RE-EXAMINATION OF SENTENCING PROCEDURES.
3. DEFENSE COUNSEL, PROSECUTORS, POLICE, CORRECTIONAL ADMINISTRATORS AND INTERESTED MEMBERS OF THE BAR AND OTHER PROFESSIONS SHOULD BE ENCOURAGED TO ATTEND.

IMPLEMENTATION

The Montana Supreme Court should implement this standard as a Uniform Rule for District Courts and by order to municipal and justice courts.

COUNCIL ACTION: Adopted as written.

PRESENTENCE REPORT

ADOPTED

TASK FORCE FINDINGS

Presentence reports are an invaluable tool upon which judges may base their sentencing decisions. The report should contain all information that would help the judge render a more intelligent sentence. Presentence reports are thought to be so important, that Missoula's city court judge has initiated a pilot project, funded by the Board of Crime Control, that provides the report for certain misdemeanants. The program has been successful, (five revocations out of 30 deferred sentences) because it gives the city judge far more information about the offender than he had without the presentence report.¹ Because these reports provide the judge with the information to make equitable sentencing decisions, the information should include the availability of community services to help the offender. Currently, judges have the discretion to refuse the preparation of a report. It should be prepared for all juveniles, felons and in all instances when the offender may be incarcerated. Section 10-1221 of the Youth Court Act requires a social summary or predisposition report for all juveniles at the dispositional hearing. The report is furnished to the defense counsel.

STANDARD 5.9

1. A PRESENTENCE REPORT SHOULD BE PREPARED FOR ALL ADULT OFFENDERS BY THE CORRECTIONS DIVISION AND BE PRESENTED TO THE COURT IN EVERY CASE WHERE THERE IS A POTENTIAL SENTENCING DISPOSITION INVOLVING INCARCERATION FOR A YEAR OR MORE.
2. A FULL PRESENTENCE REPORT SHOULD BE PREPARED WHERE THE COURT DETERMINES IT TO BE NECESSARY, AND WITHOUT EXCEPTION IN EVERY CASE WHERE INCARCERATION FOR MORE THAN FIVE YEARS IS A POSSIBLE DISPOSITION. A SHORT-FORM REPORT SHOULD BE PREPARED FOR ALL OTHER CASES.
3. THE FULL REPORT SHOULD CONTAIN AT LEAST THE FOLLOWING ITEMS:
 - a. COMPLETE DESCRIPTION OF THE CHARGE, INCLUDING A SYNOPSIS OF THE TRIAL TRANSCRIPT, IF ANY; THE OFFENDER'S VERSION OF THE CRIMINAL ACT; AND HIS EXPLANATION FOR THE ACT.
 - b. THE OFFENDER'S EDUCATIONAL BACKGROUND.
 - c. THE OFFENDER'S EMPLOYMENT BACKGROUND, INCLUDING ANY MILITARY RECORD, HIS PRESENT EMPLOYMENT STATUS, AND CAPABILITIES.
 - d. THE OFFENDER'S SOCIAL HISTORY, INCLUDING FAMILY RELATIONSHIPS, MARITAL STATUS, INTERESTS, AND ACTIVITIES.

- e. RESIDENCE HISTORY OF THE OFFENDER.
 - f. THE OFFENDER'S MEDICAL HISTORY AND, IF DESIRABLE, A PSYCHOLOGICAL OR PSYCHIATRIC REPORT.
 - g. INFORMATION ABOUT ENVIRONMENTS TO WHICH THE OFFENDER MIGHT RETURN OR TO WHICH HE COULD BE SENT SHOULD A SENTENCE OF NON-INCARCERATION OR COMMUNITY SUPERVISION BE IMPOSED.
 - h. INFORMATION ABOUT ANY RESOURCES AVIALABLE TO ASSIST THE OFFENDER, SUCH AS A TREATMENT CENTER, RESIDENTIAL FACILITIES, VOCATIONAL TRAINING SERVICES, SPECIAL EDUCATIONAL FACILITIES, REHABILITATIVE PROGRAMS OF VARIOUS INSTITUTIONS, AND SIMILAR PROGRAMS.
 - i. VIEWS OF THE PERSON PREPARING THE REPORT AS TO THE OFFENDER'S MOTIVATIONS AND AMBITIONS, AND AN ASSESSMENT OF THE OFFENDER'S EXPLANATIONS FOR HIS CRIMINAL ACTIVITY.
 - j. A FULL DESCRIPTION OF DEFENDANT'S CRIMINAL RECORD, INCLUDING HIS VERSION OF THE OFFENSES, AND HIS EXPLANATIONS FOR THEM.
 - k. A RECOMMENDATION AS TO DISPOSITION.
- 4. THE SHORT-FORM REPORT SHOULD CONTAIN THE INFORMATION REQUIRED IN SECTIONS 3 a, c, d, e, h, i and k.
 - 5. ALL INFORMATION IN THE PRESENTENCE REPORT SHOULD BE FACTUAL AND VERIFIED TO THE EXTENT POSSIBLE BY THE PREPARER OF THE REPORT. FAILURE TO VERIFY, IF THE INFORMATION IS CHALLENGED, SHOULD RESULT IN THE REFUSAL OF THE COURT TO CONSIDER THE INFORMATION.
 - 6. ALL PRESENTENCE REPORTS SHOULD BE MADE AVAILABLE TO DEFENSE COUNSEL PRIOR TO SENTENCING AND BE FORWARDED BY THE COURT TO THE APPROPRIATE CORRECTIONAL AUTHORITY AFTER SENTENCING.

IMPLEMENTATION

Legislation should be enacted and adequate funding provided by the 1977 Legislature to implement the standard.

REFERENCE

- 1. Sharon Barrett, "Court Program Gives First Offenders Second Chance," Missoulian, December 31, 1975. p. 3.

COUNCIL ACTION: Adopted as written.

DISCLOSURE OF PRESENTENCE REPORT

ADOPTED

TASK FORCE FINDINGS

Montana law grants a judge the discretion to allow the defense to see a presentence report, or parts of it.¹ We believe that the defendant should be informed of the basis for his sentence with the chance to challenge the report. Disclosure of the presentence report and all similar documents will put a judge's sentence on firmer legal grounds.

STANDARD 5.10

1. THE PRESENTENCE REPORT AND ALL OTHER DOCUMENTS USED BY THE COURT IN DETERMINING SENTENCE SHOULD BE AVAILABLE TO THE DEFENDANT AND THE PROSECUTION.
2. THE PRESENTENCE REPORT AND OTHER SENTENCING DOCUMENTS SHOULD BE MADE AVAILABLE TO BOTH PARTIES WITHIN A REASONABLE TIME, FIXED BY THE COURT, PRIOR TO THE DATE SET FOR THE SENTENCING HEARING. AFTER RECEIPT OF THE REPORT, THE DEFENSE COUNSEL MAY REQUEST:
 - a. A PRESENTENCE CONFERENCE, TO BE HELD WITHIN THE TIME REMAINING BEFORE THE SENTENCING HEARING.
 - b. A CONTINUANCE OF ONE WEEK, TO ALLOW HIM FURTHER TIME TO REVIEW THE REPORT AND PREPARE FOR ITS REBUTTAL.

EITHER REQUEST MAY BE MADE ORALLY, WITH NOTICE TO THE PROSECUTOR. THE REQUEST FOR A CONTINUANCE SHOULD BE GRANTED ONLY:

1. IF DEFENSE COUNSEL CAN DEMONSTRATE SURPRISE AT INFORMATION IN THE REPORT; AND
2. IF THE DEFENDANT PRESENTLY IS INCARCERATED, HE CONSENTS TO THE REQUEST.

IMPLEMENTATION

1. 95-2205, R.C.M. 1947, should be amended to remove a judge's discretion in disclosing the presentence report to the defense and to make disclosure of the report and other sentencing documents mandatory.
2. Lower court judges should disclose presentence reports to the defense.

REFERENCES

1. 95-2205, R.C.M. 1947, "Availability of the report to defendant and others."

COUNCIL ACTION: Adopted as written.

SENTENCING HEARING - RIGHTS OF DEFENDANT

ADOPTEDTASK FORCE FINDINGS

Most defendants in Montana plead guilty, but the duties of the defense counsel should not end there. Counsel should be allowed to be present at the sentencing hearing, which is a crucial step in the judicial process. During that hearing, it is incumbent upon the court to guarantee that erroneous information does not influence the sentencing decision. Due to the gravity of this decision, the same procedural rights that were insured throughout the trial should be maintained at the sentencing hearing. This last hearing in the process of adjudication presents the judge with an opportunity to gather more information on the defendant to facilitate the most intelligent sentence.

STANDARD 5.11

1. AT THE SENTENCING HEARING THE DEFENDANT SHOULD HAVE THESE RIGHTS:
 - a. TO BE REPRESENTED BY COUNSEL.
 - b. TO PRESENT EVIDENCE ON HIS OWN BEHALF.
 - c. TO SUBPOENA WITNESSES.
 - d. TO CALL OR CROSS-EXAMINE THE PERSON WHO PREPARED THE PRESENTENCE REPORT AND ANY PERSONS WHOSE INFORMATION, CONTAINED IN THE PRESENTENCE REPORT, MAY BE HIGHLY DAMAGING TO THE DEFENDANT.
 - e. TO PRESENT ARGUMENTS AS TO SENTENCING ALTERNATIVES.
2. GUIDELINES AS TO THE EVIDENCE THAT MAY BE CONSIDERED BY THE SENTENCING COURT FOR PURPOSES OF DETERMINING SENTENCES, SHOULD PROVIDE THAT:
 - a. THE RULES OF EVIDENCE APPLICABLE TO CRIMINAL TRIAL SHOULD NOT BE APPLIED TO THE SENTENCING HEARING, AND ALL EVIDENCE SHOULD BE RECEIVED SUBJECT TO THE EXCLUSION OF IRRELEVANT, IMMATERIAL, OR UNDULY REPETITIOUS EVIDENCE. HOWEVER, SENTENCING DECISIONS SHOULD BE BASED ON COMPETENT AND RELIABLE EVIDENCE. WHERE A PERSON PROVIDING EVIDENCE OF FACTUAL INFORMATION IS REASONABLY AVAILABLE, HE SHOULD BE REQUIRED TO TESTIFY ORALLY IN ORDER TO ALLOW CROSS-EXAMINATION RATHER THAN BEING ALLOWED TO SUBMIT HIS TESTIMONY IN WRITING.

- b. EVIDENCE OBTAINED IN VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS SHOULD NOT BE CONSIDERED OR HEARD IN THE SENTENCE HEARING AND SHOULD NOT BE REFERRED TO IN THE PRESENTENCE REPORT.
- c. IF THE COURT FINDS, AFTER CONSIDERING THE PRESENTENCE REPORT AND WHATEVER INFORMATION IS PRESENTED AT THE SENTENCE HEARING, THAT THERE IS A NEED FOR FURTHER STUDY AND OBSERVATION OF THE DEFENDANT BEFORE HE IS SENTENCED, IT MAY TAKE NECESSARY STEPS TO OBTAIN THAT INFORMATION. THIS INCLUDES HIRING OF LOCAL PHYSICIANS, PSYCHIATRISTS, OR OTHER PROFESSIONALS; COMMITTING THE DEFENDANT FOR NO MORE THAN 45 DAYS TO A LOCAL OR REGIONAL DIAGNOSTIC CENTER; AND ORDERING A MORE COMPLETE INVESTIGATION OF THE DEFENDANT'S BACKGROUND AND SOCIAL HISTORY.

IMPLEMENTATION

The Montana Supreme Court should mandate implementation of this standard for all district courts.

COUNCIL ACTION: Adopted as written.

IMPOSITION OF SENTENCE

ADOPTED

TASK FORCE FINDINGS

Montana has no provision for recording the considerations resulting in the imposition of sentence. Sentences are given in open court, a record of the sentence is made and generally the offender is given the reason for his sentence. The judge should state the purpose of a sentence as well as explain to the convicted the rationale behind that decision.

STANDARD 5.12

MONTANA LAW SHOULD REQUIRE THE SENTENCING JUDGE TO SET FORTH IN WRITING, EITHER AS A SEPARATE FINDING OR AS A PART OF THE COMMITMENT ORDER, THE CONSIDERATIONS THAT HAVE GONE INTO EACH SENTENCE IMPOSED. POSSIBLE CLASSIFICATION OF CONSIDERATIONS ARE THE FOLLOWING:

1. RETRIBUTION, THE EXACTION OF PAYMENT--"AN EYE FOR AN EYE."
2. DETERRENCE, WHICH MAY BE "GENERAL" (I.E., Discouraging others than the defendant from committing the wrong). "SPECIAL" (Discouraging the specific defendant from doing it again), OR BOTH.
3. DENUNCIATION, OR CONDEMNATION--AS A SYMBOL OF DISTINCTLY CRIMINAL "GUILT," AS AN AFFIRMATION AND RE-ENFORCEMENT OF MORAL STANDARDS, AND AS REASSURANCE TO THE LAW-ABIDING.
4. INCAPACITATION DURING THE TIME OF CONFINEMENT.
5. REHABILITATION OR REFORMATION OF THE OFFENDER.

THE JUDGE SHALL STATE IN HIS SENTENCE THE RIGHTS REMOVED FROM THE OFFENDER, AND STATE HIS REASONS FOR SO DOING.

IMPLEMENTATION

The 1977 Legislature should provide guidelines for sentencing and require that sentencing judges set down and comment on the guidelines used.

REFERENCES

1. Marvin E. Frankel, Criminal Sentences-Law Without Order, American Century, 1972, p. 106

COUNCIL ACTION: Adopted as written.

CLASSIFICATION OF OFFENDERS



OVERVIEW

CHAPTER 6

CLASSIFICATION OF OFFENDERS

The Montana State Prison administrators in 1891 kept a register of prisoners with a short history. Seventeen items were listed: from name, age and complexion to the date and term of sentence.¹ Information about inmates was at a bare minimum then. By 1924 classification had progressed to an attempt to classify offenders according to their attraction toward criminals with similar records: "A forger will seek the company of a forger, a burglar a burglar, and a highway robber of a man sentenced for a similar crime. It is believed that their criminal records attract each other."²

Today classification deals not only with inmate management, but also with determining the needs of offenders in order to assign them to proper programs. In the past, offenders were classified for the sole purpose of managing them, and little notice was given to their requirements. Better classification systems will be required as corrections moves from the mere management of people to the more complex area of helping them help themselves.

The three standards in this chapter are aimed at the eventual reintegration of the offender into the community. The trend of corrections is moving from punishment to reintegration, as in Standard 6.1, Classification of Offenders.

It recommends succinctly that a classification system center around these two principles: (1) That an offender gets no more help or supervision than he actually needs, and: (2) That security be dictated by his potential risk.

The classification system should be operated by the Corrections Division for both adult and juvenile institutions. Assistance by the state should be made available upon local request.

REFERENCES

1. Rules and Regulations for the Government of the Montana State Prison (1891), Rule 7.
2. Lavigne, Frank C. Crimes, Criminals and Detectives (Helena: State Publishing Co., 1924), p.86.

CLASSIFICATION OF OFFENDERS

ADOPTED

TASK FORCE FINDINGS

Classification systems, especially in the Montana State Prison, have changed tremendously during the past 75 years. Unlike today, inmates were classified after the fact. Here's the way the prison reported on conduct of inmates discharged in 1899:

Good	165
Fair	12
Bad	4
VERY BAD	2
Total	<u>183</u>

Now classification attempts to predict behavior, and at least to define those available resources that best fit an inmate's needs. The prison has established an Evaluation and Diagnostic Center to make this possible. Inmates will be classified according to their psychological profile, their past criminal record, as well as their social, educational and military background. Classification is inadequate in most jails.

PROBLEM: Because corrections has been lacking in resources and knowledge, present classification systems are used more to determine risk and to manage offenders than to diagnose and treat them

STANDARD 6.1

THE CORRECTIONS DIVISION AND THE STATE'S LARGER JAILS SHOULD IMMEDIATELY EXAMINE THEIR CLASSIFICATION SYSTEMS ACCORDING TO THE FOLLOWING PRINCIPLES:

1. NO OFFENDER SHOULD RECEIVE MORE SUPERVISION OR HELP THAN REQUIRED.
2. NO OFFENDER SHOULD BE KEPT UNDER HEAVIER SECURITY THAN HIS POTENTIAL RISK DICTATES.
3. OFFENDER NEEDS SHOULD BE PROFESSIONALLY DETERMINED AND MATCHED TO AVAILABLE RESOURCES.

IMPLEMENTATION

The sheriffs operating Montana's larger jails should develop classification systems which define the systems' objectives, and the means of reaching and evaluating them. Aid from the Corrections Division should be available upon request. The goal should be the reentry of the offender into society by matching resources with the offender's needs.

COUNCIL ACTION: Adopted as written.

CLASSIFICATION FOR INMATE MANAGEMENT

ADOPTEDTASK FORCE FINDINGS

The resources of corrections are so limited that a good classification system is needed at the institutions and larger jails for maximum impact on offenders. A classification committee at each of the state's correctional institutions and the largest county jails would make it easier to put offenders into categories according to their various needs and custody requirements.

STANDARD 6.2

1. A CLASSIFICATION SYSTEM SHOULD INCLUDE THE FOLLOWING:
 - a. DESCRIBE THE MAKEUP OF THE CLASSIFICATION COMMITTEE AS WELL AS ITS DUTIES AND RESPONSIBILITIES.
 - b. DEFINE ITS RESPONSIBILITIES FOR CUSTODY, EMPLOYMENT, AND VOCATIONAL ASSIGNMENTS.
 - c. SHOW WHAT PHASES OF AN INMATE PROGRAM MAY BE CHANGED WITHOUT COMMITTEE ACTION.
 - d. SPECIFY RULES ON INMATE TRANSFER FROM ONE PROGRAM TO ANOTHER.
 - e. SPECIFY WHAT SHOULD BE IN THE CLASSIFICATION INTERVIEW.
 - f. DEVELOP WRITTEN POLICIES ON INITIAL INMATE CLASSIFICATION AND RECLASSIFICATION.
2. THE PURPOSE OF INITIAL CLASSIFICATION SHOULD BE:
 - a. TO SCREEN INMATES FOR SAFE AND PROPER PLACEMENTS AND TO DETERMINE WHETHER THESE PROGRAMS WILL ACCOMPLISH THE PURPOSES FOR WHICH INMATES ARE PLACED IN THE CORRECTIONAL SYSTEM.
 - b. THOROUGH ORIENTATION TO GIVE NEW INMATES AN OPPORTUNITY TO LEARN OF THE PROGRAMS AVAILABLE TO THEM AND OF THE PERFORMANCE EXPECTED TO GAIN THEIR RELEASE.
3. THE PURPOSE OF RECLASSIFICATION SHOULD BE THE INCREASING INVOLVEMENT OF OFFENDERS IN COMMUNITY-BASED PROGRAMS.
4. INITIAL CLASSIFICATION SHOULD NOT TAKE LONGER THAN TWO WEEKS.
5. REVIEW OF RECLASSIFICATION SHOULD BE UNDERTAKEN AT INTERVALS NOT EXCEEDING NINE MONTHS FOR ADULTS AND THREE MONTHS FOR JUVENILES.
6. THE ISOLATION OR QUARANTINE PERIOD, IF ANY, SHOULD BE AS BRIEF AS POSSIBLE.
7. INITIAL CLASSIFICATION AND RECLASSIFICATION SHOULD BE IN THE INTEREST OF THE INMATES' NEEDS.

IMPLEMENTATION

1. Each correctional institution and agency in the Corrections Division and Montana's larger jails should examine their classification systems immediately to determine whether changes should be made.
2. It is recognized that effective programming will require a significant increase of staffing.
3. Present staff and resources, such as the Board of Crime Control, should be utilized to design an effective program and prepare appropriate materials to enable legislative implementation.

COUNCIL ACTION: Adopted as written.

COMMUNITY CLASSIFICATION TEAMS

REJECTED

TASK FORCE FINDINGS

Community classification teams should be established in the larger communities because of their size and the programs available for offenders not sentenced to jail or prison. Because they would be a part of the community, classification teams would be familiar with the peculiar problems of each city and the desires of the public concerning punishment. Screening and diversion would be aided by such teams as they classify offenders for the courts. Incarceration should be used only as a last resort. PROBLEM: Montana has no community classification teams in its largest cities to provide insight and expertise when screening offenders.

STANDARD 6.3

1. COMMUNITY CLASSIFICATION TEAMS SHOULD BE ESTABLISHED IN MONTANA'S LARGEST CITIES FOR THE FOLLOWING REASONS:
 - a. TO ENCOURAGE THE DIVERSION OF SELECTED OFFENDERS.
 - b. TO MINIMIZE THE USE OF INSTITUTIONS FOR CONVICTED OR ADJUDICATED OFFENDERS.
 - c. TO SELECT OFFENDERS FOR COMMUNITY-BASED PROGRAMS.
2. THE TEAMS SHOULD:
 - a. SELECT OFFENDERS WHO SHOULD BE DIVERTED.
 - b. HELP THE COURTS IDENTIFY OFFENDERS WHO DO NOT NEED TO BE IMPRISONED.
 - c. ASSIST PROBATION AND PAROLE OFFICERS, AND STATE AND LOCAL INSTITUTIONS, IN PLACING OFFENDERS INTO SPECIFIC COMMUNITY PROGRAMS OF TRAINING, EDUCATION, EMPLOYMENT AND RELATED SERVICES.
 - d. EVALUATE PERIODICALLY THESE PLACEMENT PROGRAMS.
3. THESE TEAMS SHOULD DEVELOP CRITERIA FOR SCREENING OFFENDERS WHO WILL:
 - a. CORRECT THEMSELVES WITHOUT ELABORATE PROGRAMS.
 - b. REQUIRE DIFFERENT DEGREES OF COMMUNITY PROGRAMS AND SUPERVISION.
 - c. NEED HIGHLY CONCENTRATED INSTITUTIONAL CONTROLS AND SERVICES.
4. THE PUBLIC'S CONCERNS SHOULD BE CONSIDERED BY THE CLASSIFICATION TEAMS WHEN MAKING DECISIONS.
5. THE TEAMS SHOULD BE ABLE TO MAKE RECOMMENDATIONS CONCERNING NEW COMMUNITY PROGRAMS AND THE MODIFICATION OF OLD PROGRAMS.

IMPLEMENTATION

1. Local correctional agencies should establish, jointly and cooperatively, community classification teams.
2. The teams' planning and operation should involve:
 - a. State and local correctional personnel from institutions, jails, probation and parole.
 - b. Personnel of specific community-based programs, such as employment and work-study programs and half-way houses.
 - c. Representatives from the police, courts and public.

CROSS-REFERENCE STANDARDS

Chapter 7 - Community Corrections.
Courts Chapter 2 - Screening.
Chapter 3- Diversion.

COUNCIL ACTION:

The council felt that this standard as written placed too much power in the hands of the community classification teams and removed it from the officials who were elected to do this type of decisionmaking. However, they did agree citizens and criminal justice system professional input was vital in this decisionmaking process. The council rewrote this standard to reflect this viewpoint. See colored insert on next page.

ADOPTED VERSION OF STANDARD 6.3

STANDARD 6.3

1. COMMUNITY CLASSIFICATION TEAMS SHOULD BE ESTABLISHED IN MONTANA'S LARGEST CITIES TO ASSIST CRIMINAL JUSTICE AGENCIES FOR THE FOLLOWING REASONS:
 - a. TO ENCOURAGE THE DIVERSION OF SELECTED OFFENDERS.
 - b. TO MINIMIZE THE USE OF INSTITUTIONS FOR CONVICTED OR ADJUDICATED OFFENDERS.
 - c. TO SELECT OFFENDERS FOR COMMUNITY-BASED PROGRAMS.
2. THE TEAMS SHOULD ASSIST THE COUNTY ATTORNEY IN:
 - a. SELECTING OFFENDERS WHO SHOULD BE DIVERTED.
 - b. HELPING THE COURTS IDENTIFY OFFENDERS WHO DO NOT NEED TO BE IMPRISONED.
 - c. ASSISTING PROBATION AND PAROLE OFFICERS, AND STATE AND LOCAL INSTITUTIONS, IN PLACING OFFENDERS INTO SPECIFIC COMMUNITY PROGRAMS OF TRAINING, EDUCATION, EMPLOYMENT AND RELATED SERVICES.
 - d. EVALUATING PERIODICALLY THESE PLACEMENT PROGRAMS.
3. THESE TEAMS SHOULD ASSIST IN DEVELOPING CRITERIA FOR SCREENING OFFENDERS WHO WILL:
 - a. CORRECT THEMSELVES WITHOUT ELABORATE PROGRAMS.
 - b. REQUIRE DIFFERENT DEGREES OF COMMUNITY PROGRAMS AND SUPERVISION.
 - c. NEED HIGHLY CONCENTRATED INSTITUTIONAL CONTROLS AND SERVICES.
4. THE PUBLIC'S CONCERNS SHOULD BE CONSIDERED BY THE CLASSIFICATION TEAMS WHEN MAKING DECISIONS.
5. THE TEAMS SHOULD BE ABLE TO MAKE RECOMMENDATIONS CONCERNING NEW COMMUNITY PROGRAMS AND THE MODIFICATION OF OLD PROGRAMS.

COMMUNITY

CORRECTIONS

CHAPTER 7 - OVERVIEW

COMMUNITY CORRECTIONS

Community corrections has received more emphasis in recent years and has become a vital part of the correctional process. Broadly defined, it is any correctional activity occurring in the community without incarcerating the offender. Yet surveillance and control remain a major part of the program, though it does not necessarily mean an increase in facilities or institutions. Correcting offenders in the community is an ancient concept. Historically, because there were no institutions or correctional programs to incarcerate law breakers, society either corrected their wrongdoers in the community, or killed or banished them.

The advent of the penitentiary changed that 200 years ago, and increasingly more offenders were sentenced to prison. Montana State Prison reached its maximum population, upwards of 760, in 1964.¹ Now the annual average population is about 360, dramatically illustrating how the state has turned to the community to deal with the nondangerous offender.

The community corrections concept is desirable to administrators because it is more economical and humane than jail or prison. Montana has been employing community corrections with the approximately 1600 offenders on probation and parole. It is interesting to note that in a 1975 Board of Crime Control survey, 27% of the public said that local government should bear the responsibility of correction; another 22% said it should be in the community.²

Written and posted rules of conduct are essential to maintain good order and to inform inmates what is expected of them. Every offender who is admitted should receive his personal copy.

In keeping with the emphasis on the reintegration of the offender into the community, Montana's larger jails should be more than just detention facilities. Educational, vocational, job placement and counseling services should be made available to all inmates. Possible funding sources are the Board of Crime Control, Corrections Division and the counties. Volunteers should be recruited and trained for counseling, teaching and recreation. A range of activities to provide physical exercise should be available both in the facility and through the use of local recreational resources. Other leisure activities should be supported by access to library materials, television, radio, writing materials, playing cards and games. As the Jail Survey emphatically states, "it is important that the inmate make some use of his idle time."

Cooperative planning and efforts with the Corrections Division should be used to facilitate implementation of the following standards and recommendations. The following standards are intended to be specific levels of performance for which to strive. It is understood that all of the standards may not be implementable in all of Montana's jails, given the state's diverse population characteristics.

Furthermore, the 1975 Legislature appropriated nearly one-half million dollars to the Department of Institutions for a community correctional center.

The Corrections Division and other agencies, in implementing the recommendations of this chapter and increasing the use of community resources for correctional purposes, should undertake immediate cooperative studies to determine proper redistribution of manpower from institutional to community-based programs. This plan should develop a statewide correctional manpower profile including appropriate data on each worker. Staff relocated by institutional closures will be retrained.

The two standards and two recommendations of this chapter establish guidelines for Montana in developing such an approach to community corrections. The more direction community corrections has, the more likelihood it will have for success and continued funding. Because community corrections is cheaper and becoming more of a reality each year, it is in the best interests of Montana to adopt standards and recommendations to systemize the operation of corrections in the community. There is a need for public support and a professional approach to all corrections in the community.

REFERENCES

1. Montana State Prison Montana Multi-Agency Correctional Facility and Program LEAA Grant Application, May 26, 1971, p.13.
2. "MBCC Conducts Consumer Survey on Crime," Checkmate, May-June 1975.

DEVELOPMENT PLAN FOR COMMUNITY BASED ALTERNATIVES TO CONFINEMENT

ADOPTEDTASK FORCE FINDINGS

Montana does not have a comprehensive plan to explore the potential of community based corrections, despite the prospect of a community correctional center to be established by the Department of Institutions. A study has not been made to analyze Montana's correctional needs, resources and the gaps in services that would relate to corrections in the community as an alternative to institutionalization. Manpower needs for the community-based programs should be fulfilled through a plan for the redistribution of personnel from institutions to the community. This plan should provide an overview of the correctional manpower situation including appropriate data on each worker, and proposals for retraining staff relocated by institutional closures. PROBLEM: Montana has no organized plan or framework upon which to build a system of community corrections.

STANDARD 7.1

AN ANALYSIS SHOULD BE MADE OF MONTANA'S NEEDS, RESOURCES, AND GAPS IN COMMUNITY SERVICE. IT SHOULD DEVELOP A SYSTEMATIC PLAN TO IMPLEMENT A RANGE OF ALTERNATIVES TO INSTITUTIONALIZATION. THIS PLAN SHOULD SPECIFY THE SERVICES TO BE PROVIDED DIRECTLY BY THE CORRECTIONS DIVISION AND THROUGH COMMUNITY RESOURCES.

MINIMUM ALTERNATIVES TO BE INCLUDED IN THE PLAN SHOULD BE:

1. NONRESIDENTIAL SUPERVISION PROGRAMS IN ADDITION TO PROBATION AND PAROLE.
2. RESIDENTIAL ALTERNATIVES TO INCARCERATION.
3. COMMUNITY RESOURCES OPEN TO CONFINED POPULATIONS.
4. PRERELEASE PROGRAMS.
5. COMMUNITY FACILITIES FOR RELEASED OFFENDERS IN THE CRITICAL REENTRY PHASE, WITH PROVISION FOR SHORT-TERM RETURN AS NEEDED.

IMPLEMENTATION

1. The Corrections Division should immediately begin a feasibility study to analyze Montana's potential for community corrections.
2. Funding for this study should be sought through the Board of Crime Control and the legislature.

COUNCIL ACTION: Adopted as written.

INMATE INVOLVEMENT IN COMMUNITY PROGRAMS

AMENDED
ADOPTEDTASK FORCE FINDINGS

Despite much research and many recommendations on the subject, it is difficult to determine when an inmate is ready for release. Montana currently only has parole and work/study furlough available as a method of gauging an offender's behavior before the termination of correctional supervision. This release process would be greatly enhanced if there were community corrections programs for inmates to become involved in before their total release. This would allow correctional authorities to not only attempt to provide human resources for the inmates, but also to supervise their behavior halfway between an institution and total freedom. PROBLEM: Montana has no procedure, other than parole and work/study furlough, to involve inmates in the community under correctional control after release from prison or jail.

STANDARD 7.2

PRISON INMATES SHOULD ASSUME INCREASING INDIVIDUAL RESPONSIBILITY AND COMMUNITY CONTACT. A VARIETY OF LEVELS OF INDIVIDUAL CHOICE, SUPERVISION, AND COMMUNITY CONTACT SHOULD BE SPECIFIED IN THESE ARRANGEMENTS, WITH EXPLICIT STATEMENTS AS TO HOW TRANSITIONS BETWEEN LEVELS ARE TO BE ACCOMPLISHED. PROGRESS FROM ONE LEVEL TO ANOTHER SHOULD BE BASED ON SPECIFIED BEHAVIORAL CRITERIA RATHER THAN ON SENTENCE, TIME SERVED, OR SUBJECTIVE JUDGMENTS REGARDING ATTITUDES.

IMPLEMENTATION

The Corrections Division should incorporate the following into the classification system at the prison:

1. When an offender is received at an institution, he should meet the classification team to develop a plan for increasing personal responsibility and community contact.
2. At the first meeting, behavioral objectives to be accomplished within a specified period should be established by the classification team. At followup meetings, the plan will be adjusted, assuming objectives have been met, to provide for the transition into a less structured environment. This will demand increasing personal responsibility of the offender, as well as more community involvement.

3. Each inmate's status should be reviewed regularly by the classification team and favorable adjustments should be made, unless there are strong objections from the correctional staff.
4. The presumption should be in favor of decreasing levels of supervision and increasing levels of individual responsibility.
5. When an inmate fails to meet behavioral objectives, the team may move him back into more supervision or keep him at his present level.
6. Throughout the process, the primary emphasis should be on individualization and behavior changes based on the offender's interests, abilities and priorities.
7. A guiding principle should be the use of positive reinforcement in bringing about behavioral improvements rather than negative reinforcement in the form of punishment.

CROSS-REFERENCE STANDARD

6.2, "Classification for Inmate Management."

COUNCIL ACTION:

The council adopted this standard with the exception of the last sentence. (See colored insert on next page). It was felt that all possible factors in a decision should be considered and therefore sentences, time served and subjective judgements should not be excluded.

ADOPTED VERSION OF STANDARD 7.2

STANDARD 7.2

PRISON INMATES SHOULD ASSUME INCREASING INDIVIDUAL RESPONSIBILITY AND COMMUNITY CONTACT. A VARIETY OF LEVELS OF INDIVIDUAL CHOICE, SUPERVISION, AND COMMUNITY CONTACT SHOULD BE SPECIFIED IN THESE ARRANGEMENTS, WITH EXPLICIT STATEMENTS AS TO HOW TRANSITIONS BETWEEN LEVELS ARE TO BE ACCOMPLISHED.

ADOPTED

TASK FORCE FINDINGS

The corrections system is not sufficiently accountable to the people. Decisions are too often made, such as in parole, with little if any information going to the public as to how the parole board generally reaches its decisions. The same is true for parole revocations.

In a Board of Crime Control Consumer Survey on Crime conducted in the spring of 1975, 43% of the respondents indicated that they had no opinion on adult parole officers or juvenile aftercare counselors. This indicates that nearly half of the public are not familiar with the work of parole officers or aftercare workers.

The following standard shall not be misconstrued to promote public relations, but instead it will lay the foundation for a program of public information. The bad should be presented with the good to present a complete picture of corrections. A genuine program of public information should make officials more accessible to the media and public, rather than conceal them and their decisions from public scrutiny.

PROBLEM: The public does not have sufficient information or knowledge about corrections to make informed judgements about Montana's correctional system.

STANDARD 7.3

THE CORRECTIONS DIVISION SHALL INFORM AND EDUCATE THE PUBLIC AS TO EXISTING PROBLEMS, POLICIES, PROCEDURES, LAWS AND DECISIONS WHICH ARE A PART OF THE CORRECTIONS SYSTEM.

IMPLEMENTATION

1. The governor should personally endorse a corrections public information program. Across the nation experience has shown that correctional systems cannot be significantly changed without the active support and endorsement of the Governor. Montana's governor must become actively involved if our corrections philosophy and correctional institutions are to be improved.
2. The director of the Department of Institutions should insure that his department inform the public about policy and procedures, and the rationale for these decisions. If necessary, a public information officer should be hired to educate Montanas about corrections.

3. The administrator of the Corrections Division should strive to continually enlighten the public about the division and its various programs.
4. The warden should tell the people about the prison. Problems and successes should be explained, as well as the purposes of various procedures and programs.
5. The Board of Pardons should familiarize Montanans with the parole, commutation and pardon processes.
6. Sheriffs and police chiefs should inform the public about their jails and the inadequacies, if any, of these local correctional institutions.

REFERENCE

7.3, "Corrections Responsibility for Citizen Involvement." Community Crime Prevention Standard 5.4, "Cooperation within the Criminal Justice System."

COUNCIL ACTION: Adopted as written.

or Knights of Columbus; self-help groups like Alcoholics Anonymous; and groups devoted to political or social action.

2. The Corrections Division and communities should seek to involve representatives of these community resources in policy development and interagency procedures.
3. The Corrections Division should enlist the aid of such bodies in the formation of a broad-based and aggressive lobby that will speak for correctional and inmate needs and support community correctional programs.

COUNCIL ACTION: Adopted as written.

MARSHALING AND COORDINATING COMMUNITY RESOURCES

ADOPTEDTASK FORCE FINDINGS

Other than an occasional effort, Montana has not set out to bring together the employment, educational and social welfare services which would serve the needs of those to be corrected in the community. It is important to understand that community corrections, to have value, must do more than provide half-way houses and group homes for offenders to hang their hats and sleep. It must be a fully coordinated effort by the state and communities to deliver human services in the hope that this aid will help the offender from breaking the law again. PROBLEM: Montana's community resources that could become available to the offender are uncoordinated.

RECOMMENDATION 7-A

EFFECTIVE WORKING RELATIONSHIPS SHOULD BE ESTABLISHED AMONG THE DEPARTMENT OF INSTITUTIONS, THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE EMPLOYMENT SECURITY DIVISION TO COORDINATE AND DIRECT THEIR VARIOUS RESOURCES FOR THE OFFENDERS THAT ARE IN COMMUNITY CORRECTIONS.

IMPLEMENTATION

1. The Corrections Division and local areas involved in community corrections should contact the following groups for support and resources:
 - a. Employment resources-public and private, including labor unions.
 - b. Educational resources-The University of Montana System, private colleges and schools, the public education system, vocational-technical training, adult education, and state and federal programs providing training in government skills.
 - c. Social welfare services-public assistance, housing, rehabilitative services, mental health services, counseling, neighborhood centers, unemployment compensation and private social service agencies.
 - d. Other relevant community organizations and groups-ethnic and cultural groups, like the various Indian alliances; religious groups like the Masons

CORRECTION'S RESPONSIBILITY FOR CITIZEN INVOLVEMENT

ADOPTEDTASK FORCE FINDINGS

Montanans have taken the posture on corrections of "Out of sight, out of mind". Therefore, Montanans have not become involved with corrections, except for a comparatively few volunteers. But now as community corrections become increasingly utilized in the future, it behooves correctional authorities to involve citizens as much as possible in their community's efforts to correct their offenders. The Montana Office of Volunteer Effort folded on June 30, 1975, due to a lack of funding. PROBLEM: There are no coordinated state or community efforts to involve citizens in corrections, except for the Tower 7 prison program, which encourages the use of volunteers in assisting parolees.

RECOMMENDATION 7-B

THE GENERAL PUBLIC SHOULD BE INFORMED ON CORRECTIONAL ISSUES. SUPPORT SHOULD BE ORGANIZED TO OVERCOME RESISTANCE TO GENERAL REFORM EFFORTS AND SPECIFIC COMMUNITY BASED PROGRAMS. CITIZEN INVOLVEMENT SHOULD ALSO BE SECURED, INCLUDING ADVISORY AND POLICYMAKING ROLES, AND COOPERATIVE EFFORTS WITH OFFENDERS.

IMPLEMENTATION

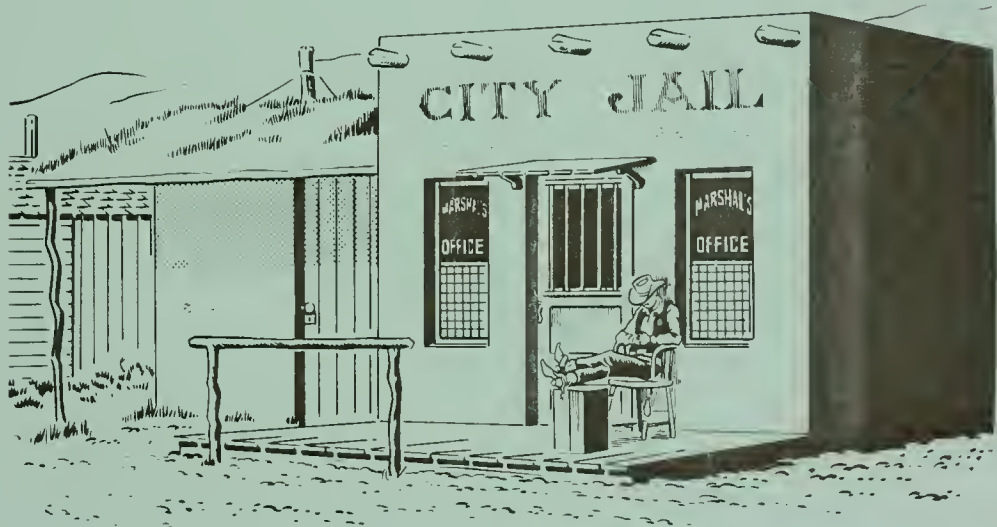
1. Corrections Division should seek Board of Crime Control funding for a citizen involvement section.
2. The Corrections Division should develop and publicize a written policy on a selection process, term of service, tasks, responsibilities, and authority for any advisory or policy making body.
3. The Corrections Division should supervise the management of volunteers in direct service capacities to offenders. This should include the:
 - a. Design and coordination of volunteer tasks,
 - b. Screening and selection of appropriate personnel,
 - c. Training,
 - d. Professional supervision of the volunteer staff and offenders who are serving as volunteers, and
 - e. Development of appropriate personnel practices for volunteers, including personnel records, advancement opportunities and other awards.

CROSS-REFERENCE STANDARD

7.3, "Public Information."
13.4, "Utilization of Volunteers."

COUNCIL ACTION: Adopted as written.

JAILS AND COMMUNITY CORRECTIONAL CENTERS



CHAPTER 8 - OVERVIEW

JAILS AND COMMUNITY CORRECTIONAL CENTERS

This chapter is concerned with Montana's existing jails and any proposed state or local community correctional centers. Montana's sheriffs are not officially a part of the state's corrections system, but nevertheless, they control correctional functions due to their supervision of county jails. These standards encourage cooperation between two elements of the corrections system. As with most systems, Montana's criminal justice system does not always clearly delineate where one function stops and another begins. So it is with corrections. Its role is often thrust upon law enforcement officials who, through their training and inclination, may feel more comfortable as peace officers than jailers. The Corrections Task Force recognizes this, and is cognizant of the problems inherent in running a county and city law enforcement agency in conjunction with a correctional facility. This chapter should help sheriffs in operating their jails, and county commissioners in planning new facilities.

The evolution of the jail in the West is interesting and colorful.

The early frontier could not afford elaborate jail facilities. In the absence of even temporary lockups some regions saw persons chained to stumps and buildings, other areas resorted to immediate punishment by exile, whipping or execution. Westerners recognized the evils imposed by these limited measures and in most cases quickly utilized existing structures or erected new buildings to serve as county jails.¹

Montana's first jail is believed to have been built in Bannack by Henry Plummer, the infamous sheriff and road agent.² Unfortunately, many of Montana's jails hark back to our wild west and gold rush heritage. Thirty-four of the 50 county jails which have known construction dates were built before 1920.³ City jails are just as old. Nine of the 20 with recorded construction dates were built before 1920 - three of which were built in the nineteenth century.⁴

A 1971 survey showed the majority of state's jails to be in "fair to poor condition."⁵ It is generally recognized that present facilities are inadequate in most cities and counties. The major obstacle to constructing new jails has been the lack of funds along with citizen apathy.

This makes it all the more important for counties and cities to seriously consider the consolidation of their jails. There are over 30 combined city - county jails. It is significant that the Board of Crime Control's 1971 Jail Survey recommended, "that any federal funds being used for upgrading detention facilities be given on a priority basis to those considering consolidation."⁶

Another approach to consider when planning new facilities is Montana's demographic future. Good planning takes into account population projections. The dramatic rise of Colstrip's population from a hamlet of 300 to a boom town of over 4,000 in a few short years

characterizes the problems inherent in correctional planning for Montana. Standards 8.1 and 8.6 encourage an efficient correctional planning process at the state and local levels to make the best use of limited funds and resources. To help counties coordinate their correctional efforts with the state, and to make state funds available for local facilities, Recommendation 8-A asserts that planning efforts should be coordinated, and that local jurisdictions should be reimbursed if they accept state commitments.

Inspection provisions are critical, especially in view of Montana's aged jails and unsafe conditions. Standard 8.2 outlines a system that provides for inspection standards, and calls for legislative authority to close any facility that does not comply with an order to improve conditions.

Wholesome food is the foundation for any correctional effort. More complaints probably stem from poor food than from any other aspect of corrections. Three meals daily should be provided at regular and reasonable hours. Meals should be well prepared, served in an attractive manner, nutritionally balanced, and of sufficient amount. Service should be prompt so that hot food is served hot. Each large facility should have a commissary service.

REFERENCES

1. Frank Richard Prassel, The Western Peace Officer
(Norman: University of Oklahoma Press, 1972), p. 121.
2. State of Montana, Jail Survey
(December, 1971), p.3.
3. Ibid.
4. Ibid.
5. Ibid., p. 24.
6. Ibid., p. 113.

TOTAL SYSTEM PLANNING

ADOPTED

TASK FORCE FINDINGS

Montana needs an overall planning approach for community corrections. Efficient planning demands that a state-wide effort be established to tie in the decentralized community corrections efforts. All community correctional planning should give the highest priority to diversion from the criminal justice system and utilization of existing community resources. PROBLEM: Montana has seen independent half-way houses come and go (depending upon funding) but other than probation and parole services, little has been done to make corrections in the community a cooperative effort between the state and local governments.

STANDARD 8.1

PLANNING FOR COMMUNITY CORRECTIONS SHOULD BE BASED ON A TOTAL SYSTEM CONCEPT THAT TAKES IN THE NEEDS OF THE OFFENDER AND THE OVERALL GOAL OF CRIME REDUCTION. TOTAL SYSTEM PLANNING FOR A PARTICULAR AREA SHOULD INCLUDE THE FOLLOWING CONCEPTS:

1. DEFINITION OF THE CORRECTIONAL PROBLEM IN A SPECIFIC AREA.
2. INFORMATION ON POPULATION TRENDS, DEMOGRAPHY, JUDICIAL PRACTICES, OFFENDER PROFILES, SERVICE AREA RESOURCES, GEOGRAPHY, AND POLITICAL AND GOVERNMENTAL COMPOSITION.
3. EXAMINATION OF RESOURCES THAT CAN BE USED TO PROVIDE COMMUNITY BASED CORRECTIONAL PROGRAMS AS ALTERNATIVES TO INCARCERATION. DIVERSION PROGRAMS WILL HAVE SIGNIFICANT IMPLICATIONS FOR A SERVICE AREA'S DETENTION CAPACITY AND PROGRAM NEEDS.
4. A DEFINITION AND DESCRIPTION OF THE CORRECTIONAL DELIVERY SYSTEM FOR THE SERVICE AREA. PROGRAMS FOR CORRECTIONAL FACILITIES AND THE COMMUNITY SHOULD BE INCLUDED.

IMPLEMENTATION

1. A service delivery system should be developed for Montana's cities with large offender populations. The needs of the community and offenders should be met through court intake, pretrial release and detention programs.
- 2, A regionalized service delivery system should be developed for areas that are sparsely populated and include a number of towns. Major facilities and programs should be consolidated in a central area or town. This should include intake and pretrial release services, special programs and resource coordination.
3. All correctional planning should include consideration of the physical, social and aesthetic impact imposed by any facility or program network.
4. All planning should be made in the context of the master plan of the Corrections Division.

REFERENCES

Chapter 3, Diversion.
Chapter 7, Community Corrections.

COUNCIL ACTION: Adopted as written.

STATE INSPECTION OF LOCAL FACILITIES

ADOPTEDTASK FORCE FINDINGS

Currently county commissioners, the fire marshall and the Department of Health are responsible for inspecting jails. State law requires the county commissioners to care for, inspect and repair their jails, and to check the security and condition of the inmates every three months.¹ The Department of Health has the key statutory authority to declare a jail a public nuisance if unsanitary conditions are not corrected.² The state or local board of health may then bring an action against the jail to correct the problem. Many of Montana's jails are ancient and decrepit and a state system of inspection is required to insure that conditions are not intolerable. A 1974 study by the Department of Health's Environmental Service Bureau revealed that 79 of the 96 city and county jails surveyed had fire hazards.³ The State Fire Marshall has stated that the fire safety in Montana's jails is, "a serious problem that needs to be resolved."⁴ "A 1971 state law authorizes inspections of jails but does not empower the state to issue mandatory regulations. Voluntary guidelines are offered instead."⁵

STANDARD 8.2

1. INSPECTORS SHOULD HAVE ACCESS TO ALL LOCAL CORRECTIONAL FACILITIES. AREAS TO BE COVERED ARE:
 - a. THE PHYSICAL PLANT.
 - b. ADMINISTRATION, INCLUDING RECORDS.
 - c. HEALTH AND MEDICAL SERVICES.
 - d. FOOD.
 - e. THE OFFENDERS' HOUSING, RIGHTS, RE-CREATION, EMPLOYMENT, LEISURE ACTIVITIES, EDUCATION AND WORK PROGRAMS.
2. AN OUTSIDE, OBJECTIVE EVALUATION SHOULD BE MADE ANNUALLY.
3. STATE AUTHORITIES SHOULD BE INFORMED IN WRITING IF THE FACILITY DOES NOT MEET PRESCRIBED STANDARDS. A STATE AGENCY SHOULD HAVE THE AUTHORITY TO REQUIRE THOSE IN CHARGE TO BRING THE FACILITY UP TO STANDARDS.
4. THE STATE MAY CONDEMN THE FACILITY IF NECESSARY CHANGES ARE NOT MADE WITHIN A REASONABLE TIME.
5. ONCE A FACILITY IS CONDEMNED, IT SHOULD BE UNLAWFUL TO CONFINED ANYONE ELSE IN IT UNTIL THE SITUATION IS CORRECTED AND APPROVED.

IMPLEMENTATION

1. The legislature should authorize standards for correctional facilities and authorize a state agency to insure compliance.
2. Inspections should allow contracts with competent evaluators.
3. Legislation should consider alternative means of funding to assist local communities when necessary.

REFERENCES

1. 16-2822 (12486), R.C.M., 1947.
2. 69-4118, R.C.M., 1947.
3. Charles S. Johnson, "Fire Precautions Inadequate In Many of Montana's Jails", Helena Independent Record, June 15, 1975, p. 3.
4. Ibid.
5. Ibid.

COUNCIL ACTION: Adopted as written.

PRETRIAL DETENTION ADMISSION PROCESS

ADOPTED

TASK FORCE FINDINGS

The prompt and proper processing of inmates into a jail is essential for their humane treatment and identification of their particular problems and needs. A standard operating procedure is required to systematize the emphasis on personal record taking to humanize the process. The intake procedure may be critical to the offender's conduct and welfare while incarcerated.

STANDARD 8.3

1. OFFENDERS SHOULD BE PROCESSED PROMPTLY.
2. THE ADMISSION PROCESS SHOULD BE IN A SECURE FACILITY, YET SEPARATED FROM THE REST OF THE JAIL, WHEN POSSIBLE.
3. A COMPREHENSIVE PERSONAL RECORD SHOULD BE MADE OF THE OFFENDER.
4. A THOROUGH MEDICAL EXAMINATION SHOULD BE MADE BY A PHYSICIAN OR TRAINED AND QUALIFIED MEDICAL PERSONNEL, WHEN DEEMED NECESSARY.

IMPLEMENTATION

1. All local correctional agencies should follow this standard for admitting prisoners.
2. Local welfare departments should insure that new admissions are interviewed by social workers.
3. This standard is also applicable to community correctional centers.

COUNCIL ACTION: Adopted as written.

STAFFING

ADOPTED

TASK FORCE FINDINGS

The National Sheriff's Association has stated that staff are the most important element in operating a jail. Typically, the role of jailer for law enforcement personnel has been one of low status. It is particularly distasteful for officers who have been trained to uphold the law in the community to supervise a jail. Montana's larger jails should be staffed by corrections personnel who will free sheriff's deputies for law enforcement duties. Certainly this is not realistic for all of Montana's 96 city and county jails. Training for jailers is currently available through a Montana State Prison correspondence course. Good training is essential to the efficient operation of a large jail. Preservice and inservice training is important for the staff to learn the fundamentals of the facility's function and their role in the correctional process.

STANDARD 8.4

1. MONTANA'S LARGER JAILS SHOULD BE STAFFED WITH PERSONNEL TRAINED FOR THAT PURPOSE.
2. ALL PERSONNEL SHOULD BE PLACED ON A MERIT OR CIVIL SERVICE STATUS.
3. SALARIES SHOULD BE EQUAL TO THOSE WHO HAVE COMPARABLE QUALIFICATIONS AND SENIORITY IN THE JURISDICTION'S SHERIFF'S AND POLICE DEPARTMENTS.
4. THE CORRECTIONS DIVISION SHOULD SET QUALIFICATIONS, WHICH SHOULD INCLUDE A HIGH SCHOOL DIPLOMA.
5. WHEREVER FEASIBLE, PROFESSIONAL SERVICES SHOULD BE CONTRACTED FOR IN THE COMMUNITY AND STATE AGENCIES.

IMPLEMENTATION

1. Where practicable, this standard is to be implemented by Montana's larger county jails.
2. The state should provide staff training programs.

COUNCIL ACTION: Adopted as written.

JAIL RELEASE PROGRAMS

ADOPTED

TASK FORCE FINDINGS

Montana law establishes a jail work release program, which allows the offender to work while serving a jail sentence.¹ The county attorney and sheriff must request that this program be initiated, and it provides that the sheriff pay the offender's board and personal expenses from the inmate's income. Work release is an invaluable correctional tool: it reimburses the county; it may keep the offender's family off welfare; it enhances his self-esteem, and it may help him keep his old job or find new work. The task force held that work release is a foremost opportunity for the offender to pay back his victim, and it should be used toward that purpose. Jail release programs in Montana should include inmates that do not present a threat to others. Work release may be operated initially from an existing jail, but this is not a long-term solution. Rented and converted buildings should be considered to separate the transitional program from the image of incarceration that accompanies the traditional jail. Along with work and study release, home furloughs and weekend visits for eligible offenders will help them maintain ties with family and friends. This should facilitate their return to the community upon the completion of their sentence.

STANDARD 8.5

1. WORK RELEASE SHOULD BE MADE AVAILABLE TO ALL INMATES IN JAILS AND COMMUNITY CORRECTIONAL CENTERS WHO DO NOT POSE A SERIOUS THREAT TO THEMSELVES OR OTHERS.
2. WEEKEND VISITS AND HOME FURLOUGHS SHOULD BE PLANNED REGULARLY FOR THOSE ELIGIBLE.
3. THE OFFENDER IN A WORK RELEASE PROGRAM SHOULD BE PAID AT PREVAILING WAGES. THE OFFENDER AND SHERIFF MAY AGREE TO ALLOCATE EARNINGS TO COVER NOT ONLY SUBSISTENCE, BUT COMPENSATION TO VICTIMS, TRANSPORTATION COSTS, FAMILY SUPPORT PAYMENTS AND SPENDING MONEY.
4. THE WORK RELEASE POPULATION SHOULD BE KEPT SEPARATE FROM OTHER INMATES, IF POSSIBLE.

IMPLEMENTATION

1. 95-2216, R.C.M. 1947, Section (a), should be amended to:
 - (a) Allow the sentencing judge to independently make the decision for a jail release program, without waiting for a request from the county or city.
 - (b) To accomodate study release.
 - (c) To provide for jail furloughs.
2. 95-2216, R.C.M. 1947, Section (c), should be amended to include compensation to victims from the inmate's earnings.
3. All judges and sheriffs should attempt to implement this standard to the broadest extent possible. It is also intended to be used in community correctional centers.
4. Release programs should draw community leadership, social agencies and business interests into action with the criminal justice system.

REFERENCES

1. 95-2216, R.C.M. 1947
See Standard 5.2, "Sentencing the Nondangerous Offender."

COUNCIL ACTION: Adopted as written.

LOCAL FACILITY EVALUATION AND PLANNING

ADOPTED

TASK FORCE FINDINGS

Prior to building a new jail or community correctional center, a comprehensive survey and analysis should be conducted to determine the needs of the state's criminal justice system and the projections in a particular area. For instance, if all of eastern Montana's coal is to be mined, it will most certainly cause the local population to soar, which in turn might make the local jail obsolete overnight. These kinds of demographic factors must be taken into account when planning new facilities. Consideration should be taken of the Board of Crime Control's 1971 Jail Survey, which recommended the consolidation of many of Montana's jails. The report states, "It is beyond comprehension why a small community would want two separate and distinct facilities (city and county jails) serving the same purpose when upkeep of one jail is more than many communities can financially handle."

STANDARD 8.6

1. FACILITY PLANNING, LOCATION AND CONSTRUCTION SHOULD DEVELOP, MAINTAIN AND STRENGTHEN OFFENDERS' TIES WITH THE COMMUNITY AND AFFORD EASY ACCESS TO THE COURTS AND LEGAL SERVICES.
2. SECURITY AND DETENTION SHOULD NOT DOMINATE THE DESIGN OF A NEW FACILITY.
3. APPLICABLE HEALTH, SANITATION, SPACE, SAFETY, CONSTRUCTION, ENVIRONMENTAL AND CUSTODY CODES AND REGULATIONS MUST BE ACCOMODATED IN THE PLAN.
4. CONSIDERATION MUST BE GIVEN TO AVAILABLE RESOURCES AND THE MOST EFFICIENT USE OF FUNDS.
5. PRISONERS SHOULD BE HANDLED IN A MANNER CONSISTENT WITH HUMANE STANDARDS.
6. EXISTING COMMUNITY FACILITIES SHOULD BE CONSIDERED AS A POTENTIAL REPLACEMENT FOR, OR ADDITION TO, A PROPOSED FACILITY.

IMPLEMENTATION

1. This standard should be used by all counties in evaluating the need for a new jail, or in planning for a new facility.
2. The Corrections Division should implement this standard when planning for a community correctional center.

COUNCIL ACTION: Adopted as written.

STATE COORDINATION OF LOCAL INSTITUTIONS

ADOPTEDTASK FORCE FINDINGS

A standard is required to implement an overall state-wide planning effort to organize and coordinate all local detention and correctional functions. The creation of the Corrections Division has given Montana a central agency that can coordinate all adult community correctional efforts, including jails. This does not mean that county jails will be controlled by the state, but simply that a state planning effort should coordinate and subsidize various local programs, like jail release.

RECOMMENDATION 8-A

BY 1982, ALL LOCAL DETENTION AND CORRECTIONAL FUNCTIONS, BOTH PRE-AND POST-CONVICTION, SHOULD BE COORDINATED WITH THE CORRECTIONS DIVISION.

IMPLEMENTATION

1. Community-based resources should first be developed through state subsidies, subject to state standards, which reimburse the local unit of government for accepting state commitments.
2. Coordinated planning for community-based correctional services should be carried out by the Corrections Division.
3. Special training and other state programs should be available immediately to offenders in the community by using mobile service delivery or specialized regional centers.
4. Program personnel should be recruited from the immediate community or service area to the maximum extent possible. Ties to the community and identification with local offenders should be considered essential to community involvement in the correctional program. Professional services should be used as well, and state training programs should be used to improve employee skills.

COUNCIL ACTION: Adopted as written.

ADULT INTAKE SERVICES

ADOPTEDTASK FORCE FINDINGS

Most persons awaiting trial should be diverted to release programs, and the remaining inmate population should be composed of those who represent a serious threat to others. Interviewers, social workers and mental health personnel should be available during intake procedures in Montana's metropolitan areas.

RECOMMENDATION 8-B

ADULT INTAKE SERVICES SHOULD:

1. PERFORM INVESTIGATIVE SERVICES FOR PRETRIAL INTAKE SCREENING.
2. EMPHASIZE DIVERSION OF ALLEGED OFFENDERS FROM THE CRIMINAL JUSTICE SYSTEM AND REFERRAL TO ALTERNATIVE COMMUNITY-BASED PROGRAMS.
3. OFFER INITIAL AND CONTINUING ASSESSMENT, EVALUATION AND CLASSIFICATION SERVICES TO OTHER AGENCIES AS REQUESTED.
4. ARRANGE SECURE DETENTION FOR PRETRIAL DETAINÉES.

IMPLEMENTATION

1. County commissioners in Montana's largest counties should match funds with the Board of Crime Control to fund pilot programs for adult intake services programs.

CROSS-REFERENCES

See Chapters 3, Diversion, and 4, Pretrial Release and Detention.
Courts Task Force Standards 1.1, "Criteria for Screening," and 1.2, "Procedures for Screening."

COUNCIL ACTION: Adopted as written.

PROBATION



CHAPTER 9 - OVERVIEW

PROBATION

Montana's courts are increasing the use of probation as a correctional status. The number of probationers increased from 1,073 in fiscal year 1974 to 1,331 in fiscal year 1975.¹ This disposition has become a prevalent sentencing standard for felons. Unquestionably it is far cheaper than imprisonment (79¢ per day² versus \$28 per day in prison in Fiscal Year 1974³) and it does not expose first time and nondangerous offenders to the effects of incarceration. In keeping with the theme of this report, prison and jail should be used only as a last resort for offenders who cannot be controlled in any other way. Because the reintegration of the offender into the community should be one of the primary purposes of corrections, it follows that probation is a useful and appropriate alternative for selected offenders.

At present, lower court sentencing authority is limited to the imposition of a fine or imprisonment, or both.⁴ Local communities are encouraged to place misdemeanants on probation.

To implement this chapter, Montana should enact by 1977, probation legislation and establish criteria for the granting of probation, probation conditions, the revocation of probation and the length of probation, and the factors that should be considered in favor of granting probation.

Criteria for probation conditions should be reasonably related to the correctional program of the defendant and not unduly restrictive of his liberty or incompatible with his constitutional rights.

Criteria and procedures for revocation of probation should provide that probation should not be revoked unless:

1. There is substantial evidence of a violation of one of the conditions of probation;
2. The probationer is granted notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel including the right to appointed counsel if he is indigent, the right to subpoena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him; and
3. The court provides the probationer a written statement of the findings of fact, the reasons for the revocation, and the evidence relied upon.

The Department of Institutions should be authorized to discharge probationers under appropriate regulations upon fulfillment of the conditions of probation. The court should be specifically authorized to discharge a person from probation at any time. The supervisory agency should recommend discharge from probation. This status may be terminated by the Corrections Division if it feels the conditions of probation have been met.

The three standards in this chapter were adopted to make probation a more effective correctional tool. A standard on increased manpower needs was not included because pro-

bation and parole are handled by the same officers in Montana. For their qualifications see Standard 11.7, "Manpower for Parole."

REFERENCES

1. Annual Report of the State Board of Pardons (Fiscal Year 1975).
2. Annual Report of the State Board of Pardons (Fiscal Year 1974), p.10.
3. Conversation with Tom Brooke,
Department of Institutions Audit and Ac-
counting Division Director, February, 1975.
4. 95-2007, R.C.M. 1947.

ORGANIZATION OF ADULT PROBATION SERVICES

ADOPTED

TASK FORCE FINDINGS

According to a recent report on Montana's probation and parole, adult field services "must be able to determine the needs of the individual offender, be knowledgeable about the resources of the community and be able to match the two"¹ to help the offender and protect the community. To be effective, probation services must be effectively organized and evaluated to determine if they are reaching their objectives.

STANDARD 9.1

ORGANIZATIONALLY, ADULT PROBATION SERVICES IN MONTANA SHOULD BE A FUNCTION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT. THE CORRECTIONS DIVISION SHOULD BE GIVEN RESPONSIBILITY FOR:

1. ESTABLISHING STATEWIDE GOALS, POLICIES, AND PRIORITIES THAT CAN BE OBJECTIVELY MEASURED.
2. PROGRAM PLANNING AND DEVELOPMENT OF NEW SERVICES.
3. STAFF DEVELOPMENT AND TRAINING.
4. PLANNING FOR MANPOWER NEEDS AND RECRUITMENT.
5. COLLECTING STATISTICS, MONITORING SERVICES, AND CONDUCTING RESEARCH AND EVALUATION.
6. OFFERING CONSULTATION TO COURTS, LEGISLATIVE BODIES, AND LOCAL EXECUTIVES.
7. ESTABLISHING STANDARDS RELATING TO PERSONNEL, SERVICES TO COURTS AND PROBATIONERS, AND TO RECORDS TO BE MAINTAINED, INCLUDING THE FORMAT OF REPORTS TO COURTS, STATISTICS, AND FISCAL CONTROLS.

IMPLEMENTATION

This standard should be carried out by the administrator of the Corrections Division.

REFERENCES

1. Roland McCauley and Michael E. Madison, Corrections (1973), p.17.

COUNCIL ACTION: Adopted as written.

SERVICES TO PROBATIONERS

ADOPTED

TASK FORCE FINDINGS

Probation officers are increasingly becoming community resource managers by making the resources and services of the community available to the probationer. Probation officers should realize that their role is to provide assistance as well as supervision to the probationer. The Corrections survey of Montana agrees:

This (the case manager role of a field officer) implies the full development and utilization of diversified community services with the professional parole and probation officer--using a large part of his working day in securing and implementing agency and community resources in fulfilling individual treatment objectives.¹

STANDARD 9.2

MONTANA'S PROBATION SYSTEMS SHOULD DEVELOP A GOAL-ORIENTED SERVICE DELIVERY SYSTEM THAT SEEKS TO REMOVE OR REDUCE BARRIERS CONFRONTING PROBATIONERS. THE NEEDS OF PROBATIONERS SHOULD BE IDENTIFIED, PRIORITIES ESTABLISHED, AND RESOURCES ALLOCATED BASED ON ESTABLISHED GOALS OF THE PROBATION SYSTEM. A MAJOR FUNCTION OF THE PROBATION OFFICER SHOULD BE THAT OF COMMUNITY RESOURCE MANAGER FOR PROBATIONERS.

IMPLEMENTATION

1. Services provided directly should be limited to activities defined as belonging distinctly to probation. Other required services should be procured from other agencies which have primary responsibility for them. It is essential that funds be provided for the purchase of services.

REFERENCE

1. McCauley, Roland and Michael E. Madison, Corrections (1973), p.33.

COUNCIL ACTION: Adopted as written.

MISDEMEANANT PROBATION

AMENDED
ADOPTED

TASK FORCE FINDINGS

Misdemeanors in Montana are defined as crimes with penalties of up to one year in jail. These lesser crimes accounted for six times as many arrests as felony crimes in Montana in 1974.¹ In that year, Montana experienced 38,294 misdemeanor arrests.² In a 1974 survey, theft (which is generally a misdemeanor) was reported as the crime that concerned Montanans the most.³ Because of the high incidence of misdemeanors in Montana, probation services should be made available to misdemeanants. Probationary supervision of these offenders should be organized at the local level on the basis of special programs to be aimed at offering an alternative to fine or imprisonment, or both. It would provide services to help these offenders stay out of trouble.

STANDARD 9.3

LOCAL COMMUNITIES SHOULD, WHERE FEASIBLE,
DEVELOP SPECIAL PROGRAMS OF INVESTIGATION
AND PROBATIONARY SUPERVISION FOR PERSONS
ON MISDEMEANANT PROBATION.

REFERENCES

1. Montana Board of Crime Control, Montana 1974 Arrests and Offenses, p.11.
2. Ibid.
3. Montana Board of Crime Control, Consumer Survey (1975), p.2.

CROSS REFERENCE STANDARD

Standard 15.4, "Presentence Report."
Courts Standard 8.1, "Unification of the Court System."

COUNCIL ACTION:

The council felt this statement to be of sufficient importance to merit the weight of a standard rather than a recommendation. With this amendment it was adopted.

MAJOR INSTITUTIONS



CHAPTER 10 - OVERVIEW

MAJOR INSTITUTIONS

Montana's first correctional institution was the prison, which was built in 1870, most of it by convict labor. It's management and operation were contracted out by the territory to the lowest bidder. In 1889, when Frank Conley became warden, it cost 76¢ a day per inmate to run the prison.¹ Today it costs approximately \$28 per day.²

At that low cost of inmate upkeep, Conley was able to take advantage of the free prisoner labor and turn their efforts into a profitable business by building roads, mining quarries, working on ranches and building houses. When he left as warden in 1921, an almost completely new prison had also been built by the inmates. In those days inmates were kept busy, and it was not until later that enforced idleness became a problem of the prison. In light of this, Standard 10.7, "Prison Labor and Industries", recommends that inmates become productive through work that will be useful in free society. This would be accomplished through job training and productive work. It is unrealistic to expect adult offenders to obey the law upon release if they do not have a marketable skill with which to compete for a job.

The standards in this chapter are applicable to juvenile as well as adult institutions. Institutions should be reserved for the incarceration of offenders who cannot be

controlled under community correctional settings, or because of their crimes the public demands institutionalization. Institutions are the most expensive means of dealing with offenders.

The first standard states that no new institutions should be built until Montana's entire criminal justice system is analyzed and it is found there are no alternatives available but to build a new institution. Sensible, ongoing evaluation and re-examination of all institutional goals are required by Standard 10.2. A periodic review should make state officials aware of the conditions of the institutions and their exact role within the entire correctional system. This standard may call for modification of existing institutions, for correctional institutions should be made as humane as possible while fulfilling their mission.

The other seven standards and recommendations in the chapter are concerned with the makeup of the institution in terms of helping offenders change their behavior. Educational and vocational training are emphasized in Recommendation 10-B. The last three standards in the chapter deal with religious, recreational and counseling programs.

One standard is devoted exclusively to the special types of offenders that disrupt institutions and cause trouble both for staff and other inmates. These persons should be dealt with

through special programs. Professional mental health facilities should be available in institutions to care for the emotionally disturbed. The mentally ill should be transferred to a mental health facility for the best interests of all concerned.

Institutions play a major role in Montana's corrections system. The following standards are presented in the spirit of upgrading their performance in dealing with the offenders who require a high degree of custody and security that only institutions can provide.

See proposed Standard 10.12 in the minority report in the addendum.

REFERENCES

1. Bill Owen, "Prison Was Profitable Business for Early-Day Montana Entrepreneur," Helena Independent Record, March 2, 1975, p. 19.
2. Discussion with the Department of Institutions Audit and Accounting Division administrator, Tom Brooke, January 9, 1975. Estimates on the cost of keeping an inmate per day at the prison run from \$28 to \$35, depending upon how the cost is figured. The higher amount includes the operation of the ranch and license tag plant, which is not related directly to the care and custody of the inmates.

PLANNING NEW CORRECTIONAL INSTITUTIONS

ADOPTED

TASK FORCE FINDINGS

A plan is required to determine the need for a new institution. All alternatives should be thoroughly and objectively explored before proceeding with construction. More fundamentally, such a plan should tell correctional officials if a new institution is necessary. When a need is determined, this plan should follow up with criteria for the location of the new institution and minimum requirements for the humane custody of the inmates. PROBLEM: Montana needs an analytical assessment to determine correctional requirements.

STANDARD 10.1

A POLICY OF NOT BUILDING NEW MAJOR INSTITUTIONS FOR JUVENILE OR ADULT OFFENDERS SHOULD BE ADOPTED, UNTIL AN ANALYSIS OF THE TOTAL CRIMINAL JUSTICE AND CORRECTIONS SYSTEMS PRODUCES A CLEAR FINDING THAT NO ALTERNATIVE IS POSSIBLE. IN THE LATTER INSTANCE, THE ANALYSIS SHOULD CONFORM GENERALLY TO THE "TOTAL SYSTEM PLANNING" DISCUSSED IN CHAPTER 8. IF THIS EFFORT PROVES CONCLUSIVELY THAT A NEW INSTITUTION IS ESSENTIAL, THESE FACTORS SHOULD CHARACTERIZE THE PLANNING AND DESIGN PROCESS:

1. A COOPERATIVE PLANNING EFFORT SHOULD IDENTIFY THE PURPOSE OF THE PHYSICAL PLANT.
2. THE SIZE OF THE INMATE POPULATION OF THE PROJECTED INSTITUTION SHOULD BE SMALL ENOUGH TO ALLOW SECURITY WITHOUT EXCESSIVE REGIMENTATION.
3. THE LOCATION OF THE INSTITUTION SHOULD BE SELECTED ON THE BASIS OF ITS NEARNESS TO:
 - a. AREAS CAPABLE OF PROVIDING OR ATTRACTING ADEQUATE NUMBERS OF QUALIFIED LINE AND PROFESSIONAL STAFF MEMBERS OF RACIAL AND ETHNIC ORIGIN COMPATIBLE WITH THE INMATE POPULATION, AND CAPABLE OF SUPPORTING STAFF LIFESTYLES AND COMMUNITY SERVICE REQUIREMENTS.
 - b. AREAS THAT HAVE COMMUNITY SERVICES AND ACTIVITIES TO SUPPORT THE CORRECTIONAL GOAL, INCLUDING SOCIAL SERVICES, SCHOOLS, HOSPITALS, UNIVERSITIES, AND EMPLOYMENT OPPORTUNITIES.

- c. THE COURTS AND AUXILIARY CORRECTIONAL AGENCIES.
- d. PUBLIC TRANSPORTATION.
- 4. THE PHYSICAL ENVIRONMENT OF A NEW INSTITUTION SHOULD BE DESIGNED WITH CONSIDERATION TO:
 - a. PRIVACY AND PERSONAL SPACE.
 - b. REDUCING NOISE.
 - c. REDUCTION OF SENSORY LOSS.
 - d. ENCOURAGING CONSTRUCTIVE INMATE-STAFF RELATIONSHIPS.
 - e. PROVIDING ADEQUATE UTILITY SERVICES.
- 5. PROVISION ALSO SHOULD BE MADE FOR:
 - a. DIGNIFIED FACILITIES FOR INMATE VISITING.
 - b. INDIVIDUAL AND GROUP COUNSELING.
 - c. EDUCATION, VOCATIONAL TRAINING, AND WORKSHOPS DESIGNED TO ACCOMMODATE SMALL NUMBERS OF INMATES AND TO AID SUPERVISION.
 - d. RECREATION YARDS FOR EACH HOUSING UNIT AS WELL AS LARGER RECREATIONAL FACILITIES ACCESSIBLE TO THE ENTIRE INMATE POPULATION.
 - e. MEDICAL AND HOSPITAL FACILITIES.

IMPLEMENTATION

The Corrections Division should carry out this standard.

COUNCIL ACTION: Adopted as written.

MODIFICATION OF EXISTING INSTITUTIONS

ADOPTEDTASK FORCE FINDINGS

A regular five-year review would encourage corrections officials to examine the purpose of all institutions to possibly minimize their use for offenders that might be better served in other correctional programs.

STANDARD 10.2

A FIVE-YEAR PROGRAM OF REEXAMINING EXISTING INSTITUTIONS SHOULD BE UNDERTAKEN TO MINIMIZE THEIR USE, AND, FOR THOSE WHO MUST BE INCARCERATED, TO MINIMIZE THE POTENTIALLY HARMFUL EFFECTS OF EXCESSIVE REGIMENTATION AND PHYSICAL ENVIRONMENTS.

A REEXAMINATION OF THE PURPOSES AND PHYSICAL FACILITIES OF EACH EXISTING INSTITUTION SHOULD BE UNDERTAKEN AT LEAST EVERY FIVE YEARS, IN CONNECTION WITH CONTINUING LONG-RANGE PLANNING FOR THE ENTIRE CORRECTIONS SYSTEM.

IMPLEMENTATION

The Corrections Division should undertake a review of institutions at least every five years.

COUNCIL ACTION: Adopted as written.

SPECIAL OFFENDER TYPES

ADOPTED

TASK FORCE FINDINGS

Offenders who continually cause trouble are one of the the major problems in correctional institutions. They present special situations and must be dealt with in special programs to reduce their potential for disruption. For instance, drug addicts, unless incarcerated for a serious offense, would be treated better at Galen State Hospital or a community treatment center. Another special category of inmates are those that are seriously disturbed and therefore an immediate danger to others. Close staff attention in treatment programs is warranted in their case. Special programs and dispositions are necessary for inmates who disturb the institution's order.

STANDARD 10.3

POLICIES, PROCEDURES, AND PROGRAMS SHOULD BE REEXAMINED FOR THE HANDLING OF SPECIAL PROBLEM OFFENDERS -- THE ADDICT, THE RECALCITRANT OFFENDER AND THE EMOTIONALLY DISTURBED.

IMPLEMENTATION

1. The Corrections Division and each correctional institution should immediately examine its rules for handling special offenders.
2. The Montana State Prison's Evaluation and Diagnostic Center should clearly define and specify in a plan a continuum of diagnosis, treatment and aftercare for emotionally disturbed inmates.
3. The commitment of addicts to correctional institutions should be discouraged. Correctional administrators should actively press for the development of alternative methods of dealing with addicts, preferably community-based alternatives.
4. Each institution should make special provisions for inmates who have serious behavior problems and constitute immediate danger to others and/or themselves.
5. Each correctional agency should provide for professional mental health treatment of emotionally disturbed offenders. Mentally ill offenders should be transferred to mental health facilities.

COUNCIL ACTION: Adopted as written.

RELIGIOUS PROGRAMS

ADOPTED

TASK FORCE FINDINGS

Religion has a traditional place in institutions as an integral part of correctional treatment programs. Mandatory attendance at church services is no longer recommended as in the past, but offenders should be allowed to participate in the religion of their choice. Special mention should be made of unusual religious sects or practices. Unless these beliefs are patently counterfeit, we believe that administrators should attempt to accomodate extraordinary religious practices.

STANDARD 10.4

1. PROGRAM PLANNING SHOULD INCLUDE RELIGIOUS HISTORY AND PRACTICES OF THE PERSON TO INCREASE HIS CHANCES TO FOLLOW THE RELIGION OF HIS CHOICE WHILE CONFINED.
2. THE CHAPLAIN SHOULD PLAN AN INTEGRAL PART IN INSTITUTIONAL PROGRAMS.
3. THE CHAPLAIN SHOULD LOCATE RELIGIOUS RESOURCES IN THE CIVILIAN COMMUNITY FOR THOSE OFFENDERS WHO DESIRE ASSISTANCE ON RELEASE.
4. THE CORRECTIONAL ADMINISTRATOR SHOULD DEVELOP AN ADAPTIVE ATTITUDE TOWARD THE GROWING NUMBERS OF RELIGIOUS SECTS AND BELIEFS AND PROVIDE ALL REASONABLE ASSISTANCE TO THEIR PRACTICE.
5. COMMUNITY REPRESENTATIVES OF ALL FAITHS SHOULD BE ENCOURAGED TO PARTICIPATE IN RELIGIOUS SERVICES AND OTHER ACTIVITIES WITHIN THE INSTITUTION.

IMPLEMENTATION

Policies and practices should be adopted to insure the development of a full range of religious programs in Montana's correctional institutions.

CROSS-REFERENCE STANDARD

Community Crime Prevention
Standard 1.6 "Churches and Religious Organizations."

COUNCIL ACTION: Adopted as written.

RECREATION PROGRAMS

ADOPTED

TASK FORCE FINDINGS

Recreation has long been recognized as a catharsis for inmates and a means of alleviating the monotony of institutional life. Not only does recreation help relieve pent-up hostility and tension, but it also presents an opportunity for vocational training, such as in arts and crafts. Therefore, recreation be given major emphasis in all correctional institutions. Program planning for every offender should include specific information concerning interests and capabilities related to leisure-time activities. The range of recreational activities to be made available to inmates should be broad in order to meet a wide range of interests and talents. These activities should help offenders make constructive use of leisure time that can be followed when they are reintegrated into the community. Recreational activities to be offered inmates should include music, athletics, painting, writing, drama, handicrafts, and similar pursuits that reflect the legitimate leisure-time activities of free citizens. Whenever possible, recreational activities should become a part of vocational training. Hobbies, recreation and vocational training enhance the opportunity for a successful life after release.

STANDARD 10.5

POLICIES AND PRACTICES SHOULD BE DEVELOPED TO MAKE RECREATION AN IMPORTANT RESOURCE FOR CHANGING BEHAVIOR PATTERNS OF OFFENDERS.

EVERY INSTITUTION SHOULD HAVE A FULL-TIME, TRAINED AND QUALIFIED RECREATION DIRECTOR WITH RESPONSIBILITY FOR THE TOTAL RECREATION PROGRAM OF THAT FACILITY. HE ALSO SHOULD BE RESPONSIBLE FOR INTEGRATION OF THE ACTIVITY WITH THE TOTAL PROGRAM PLANNING FOR THE OFFENDER.

IMPLEMENTATION

Each correctional institution should immediately set policies to support recreation programs.

COUNCIL ACTION: Adopted as written.

COUNSELING PROGRAMS

ADOPTED

TASK FORCE FINDINGS

Good counseling is the core of any institutional treatment program designed to bring about a change in the offender's behavior. Counseling should provide the offender with self-awareness so that he may learn of the motivation behind his actions in the hope that he will become better adjusted and will obey the law. Whenever possible, family members and volunteers should be included in the counseling sessions to help the offender through increased support.

STANDARD 10.6

PLANNED, ORGANIZED, AND ONGOING COUNSELING PROGRAMS SHOULD BE DEVELOPED. THIS IS INTENDED TO PROVIDE A SOCIAL AND EMOTIONAL CLIMATE CONDUCIVE TO AID BEHAVIORAL CHANGE AND INTERPERSONAL GROWTH.

1. THREE LEVELS OF COUNSELING PROGRAMS SHOULD BE PROVIDED:
 - a. INDIVIDUAL, FOR SELF-DISCOVERY IN A ONE-TO-ONE RELATIONSHIP.
 - b. SMALL GROUP, FOR SELF-DISCOVERY IN AN INTIMATE GROUP SETTING WITH OPEN COMMUNICATION.
 - c. LARGE GROUP, FOR SELF-DISCOVERY AS A MEMBER OF A LIVING UNIT COMMUNITY WITH RESPONSIBILITY FOR THE WELFARE OF THAT COMMUNITY.
2. INSTITUTIONAL ORGANIZATIONS SHOULD SUPPORT COUNSELING PROGRAMS BY COORDINATING GROUP LIVING, EDUCATION, WORK, AND RECREATIONAL PROGRAMS TO MAINTAIN AN OVERALL SUPPORTIVE CLIMATE. THIS SHOULD BE ACCOMPLISHED THROUGH A PARTICIPATIVE MANAGEMENT APPROACH.
3. COUNSELING WITHIN INSTITUTIONS SHOULD BE GIVEN HIGH PRIORITY IN RESOURCES AND TIME.

IMPLEMENTATION

1. Each institution should begin immediately to provide counseling programs according to the guidelines of this standard.
2. Each institution should have a full-time counseling supervisor responsible for developing and maintaining an overall institutional program through training and

supervising staff and volunteers.

- a. A bachelor's degree with training in social work, group work, and counseling psychology should be required.
- b. Each unit should have at least one qualified counselor to train and supervise nonprofessional staff.
- c. Trained ex-offenders and paraprofessionals with well-defined roles should be used.

CROSS-REFERENCE RECOMMENDATION

Recommendation 10-A, "Social Environment of Institutions."

COUNCIL ACTION: Adopted as written.

INCARCERATED WOMEN

ADOPTED

TASK FORCE FINDINGS

Montana does not have a satisfactory facility or program for women offenders. Each year Montana courts sentence 10-15 women to prison terms. Most of these are sent to the Nebraska Center for Women, at York, Nebraska. The practice of sending women prisoners to out-of-state facilities may create an undue hardship and raise substantial equal protection questions under the equal protection clause of the Fourteenth Amendment to the United States Constitution, and, even more strongly, under the Individual Dignity provision of the 1972 Montana Constitution, Article II, Section 4. Unless women prisoners are "seriously mentally ill," they should no longer be sent to Warm Springs State Hospital, as an alternative to York.¹ At present, there are no facilities in Montana for training or work release for women offenders. Probably because of the small number of women involved, the Montana legislature has not acted to correct this situation. Female and male offenders are not treated equally in Montana.

STANDARD 10.7

1. MONTANA CORRECTIONAL AGENCIES SHOULD TREAT ALL OFFENDERS EQUALLY.
2. PROGRAMMING AND FACILITIES FOR WOMEN OFFENDERS SHOULD BE AN INTEGRAL PART OF MONTANA'S CORRECTIONS SYSTEM.
3. INCARCERATED WOMEN SHOULD BE TRANSFERRED TO THE COMMUNITY FOR REHABILITATION AND RE-SOCIALIZATION AS SOON AS POSSIBLE.
4. CONFINED WOMEN SHOULD HAVE ADEQUATE AND SECURE LIVING QUARTERS IN MONTANA.
5. SEXUAL STEREOTYPING SHOULD BE ELIMINATED FROM ALL LEVELS OF THE CORRECTIONS SYSTEM.

IMPLEMENTATION

The Corrections Division and the legislature should implement this standard in dealing with incarcerated women offenders.

REFERENCE

1. 38-1310, R.C.M. 1947.

COUNCIL ACTION: Adopted as written.

SOCIAL ENVIRONMENT OF INSTITUTIONS

ADOPTEDTASK FORCE FINDINGS

Positive, rather than negative, reinforcement works more effectively when dealing with people. This standard should therefore become part of the institution's policy to help bring about positive attitude changes in the inmates.

RECOMMENDATION 10-A

POLICIES, PROCEDURES, AND PRACTICES SHOULD BE REEXAMINED AND IMPROVED TO BRING ABOUT AN INSTITUTIONAL SOCIAL SETTING THAT WILL STIMULATE OFFENDERS TO CHANGE THEIR BEHAVIOR AND TO PARTICIPATE ON THEIR OWN INITIATIVE IN PROGRAMS INTENDED TO ASSIST THEIR REINTEGRATION INTO THE COMMUNITY.

THE INSTITUTION SHOULD APPLY ONLY THE MINIMUM AMOUNT OF SECURITY MEASURES, BOTH PHYSICAL AND PROCEDURAL, THAT ARE NECESSARY FOR THE PROTECTION OF THE PUBLIC, THE STAFF, AND INMATES. DISCIPLINARY MEASURES SHOULD EMPHASIZE REWARDS FOR GOOD BEHAVIOR RATHER THAN THE THREAT OF PUNISHMENT FOR MISBEHAVIOR.

IMPLEMENTATION

The Corrections Division should reexamine, and if necessary revise, the rules of adult and juvenile institutions to make this standard a reality.

1. The institution's organizational structure should permit open communication, and provide for maximum input in the decision-making process.
2. The Corrections Division and the institution should make clear their correctional goals and program thrust.
3. The institution should adopt written policies and practices that will preserve the individual identity of the inmate and normalize institutional settings.
4. The institution should actively encourage cooperation between community and institution. This includes involvement of community members in planning and in activities inside and outside of the institution.

CROSS-REFERENCE STANDARD

Standard 11.9, "Counseling Programs."

COUNCIL ACTION: Adopted as written.

EDUCATIONAL AND VOCATIONAL TRAINING

ADOPTEDTASK FORCE FINDINGS

Each institution should have a comprehensive and continuous educational and vocational training program for offenders. Education-making powers should be delegated to the professionals in these fields. It is crucial that vocational programs should be relevant to today's jobs. Therefore, offenders should be trained on modern equipment and receive marketable skills to give them the chance for a job upon release. Education and vocational training should be on an individual basis to give offenders the best possible training to learn new skills or trades.

RECOMMENDATION 10-B

EDUCATIONAL AND VOCATIONAL TRAINING PROGRAMS SHOULD BE REEXAMINED TO INSURE THAT THEY MEET STANDARDS THAT WILL PERSONALIZE EDUCATION AND TRAINING. THESE PROGRAMS SHOULD BE GEARED DIRECTLY TO THE REINTEGRATION OF THE OFFENDER INTO THE COMMUNITY.

IMPLEMENTATION

1. Educational and vocational training programs for inmates and parolees should be designed and carried out by the administrator of the Corrections Division with the full cooperation of the superintendent of Public Instruction and the director of the Employment Security Division.
2. Programmed instruction should be emphasized for education and vocational programs to allow the student to advance at his own pace, to give immediate feedback and to permit personal instruction.
3. This standard applies to juvenile and adult institutions.

COUNCIL ACTION: Adopted as written.

CORRECTIONAL PROGRAMMING AND POLICIES

ADOPTEDTASK FORCE FINDINGS

Indians are Montana's largest minority and are disproportionately represented in the state's correctional system. Therefore, it is imperative that special provisions for Indian programs be made. It is important that the Indian's cultural background is not ignored in correctional settings.

RECOMMENDATION 10-C

CORRECTIONAL PROGRAMMING AND POLICIES IN ALL AGENCIES AND INSTITUTIONS SHOULD MAKE SPECIAL PROVISION FOR THE PARTICULAR CULTURAL BACK-
GROUNDS OF THE OFFENDERS SERVED.

EDUCATIONAL, VOCATIONAL, RESIDENTIAL, RELIGIOUS,
COUNSELING, RECREATIONAL AND DISCIPLINARY POLICIES
AND PROGRAMS SHOULD BE INVOLVED.

CROSS-REFERENCE STANDARDS

Standards 10.4, 10.5 and 10.6 "Religious, Recreation and Counseling Programs."

COUNCIL ACTION: Adopted as written.

PAROLE



CHAPTER 11 - OVERVIEW

PAROLE

Parole decisions in Montana are the function of the Board of Pardons, a three-member, part-time board appointed by the governor. It meets twice monthly to review an average of 45 cases; of that number, 25 cases are hearings. The remainder includes hearings for pardons, executive clemency, and parole revocation, as well as several lesser type hearings. The Adult Parole and Probation Field Services are now under the supervision of the Corrections Division. The Board of Pardons is attached to the Department of Institutions for administrative purposes.

Several of the following standards and recommendations should improve Montana's parole process by strengthening the board and its abilities. The standards attempt to reinforce a two-fold objective:

1. To protect the community from those offenders who are dangerous or who are likely to continue illegal activity.
2. To strengthen policies that encourage parole for inmates who are good risks for their rapid reintegration into the community.

The ultimate concern of any parole board is to reduce recidivism (the return rate of released offenders to prison).¹ Paroling authorities throughout the nation are continually under attack, and from both sides of the fence. Some opponents argue that

the existing parole philosophies tend to "molly coddle" offenders by releasing them from prison before the sentence is served. Other critics contend that offenders are kept too long in prison. In Montana, an offender may be paroled after serving approximately 1/5 of his sentence if he earns the necessary "good time," which is a statutory allowance for participation in educational, social and other rehabilitative activities in prison. It should be recognized that for many offenders, serving full or extensive sentences in prison may be counter-productive.

A number of recommendations are included in this chapter to insure a capable, well-qualified parole board through a selection and appointment process that is rather specific. A recommendation that no more than 20 parole grant hearings be held in one day, as opposed to an average of 25 being conducted now, should result in more thoughtful and careful decisions on the part of the parole board. Out of an average of 375 inmates interviewed for parole in fiscal years 1974 and 1975, an average of 248 (66%) were paroled.

Some of the following standards are intended to improve the overall efforts of the field officers in their functions and services as they work in the community. For example, one standard recommends that a parole officer be more of a community resource manager than a supervisor, and be able to concentrate his energies on the reintegration of the offender into the community. A parolee should be able to rely more on his parole

officer rather than attempt to avoid him. It is therefore recommended that parole officers depend more on law enforcement for necessary arrests.

The task force's intent regarding selection of parole officers is covered in the standard, "Manpower for Parole." This standard recommends that members of minorities, as well as volunteers, be used in parole supervision; and further, that a minimum of a bachelor's degree be required as a qualification for a full-time parole officer.

The thrust of this chapter is to make parole a more efficient and just system, and to increase the professionalism of the parole board and the field services.

REFERENCES

1. See Standard 14.1 for an accepted definition of recidivism in Montana.

PAROLE AUTHORITY PERSONNEL

**AMENDED
ADOPTED**TASK FORCE FINDINGS

Members of Montana's Board of Pardons are appointed by the governor with consent of the senate; however, there presently are no criteria or specific or special qualifications for selection. Neither is there presently a method for providing orientation for newly appointed board members, nor is there any provision for on-going training or experience. Since a consistently high percentage of inmates at the prison are Indians it seems reasonable that at least one member of the board have some basic knowledge of Indian culture and related problems. Finally, the existing compensation of \$25.00 per day of service for each member is hardly fitting for such responsibility.

STANDARD 11.1

THE QUALIFICATIONS AND CONDITIONS OF APPOINTMENT OF MEMBERS OF THE BOARD OF PARDONS SHOULD BE SPECIFIED BY STATUTE.

1. THE PAROLE BOARD WILL CONSIST OF THREE MEMBERS AND APPOINTMENTS TO THE BOARD SHALL BE FOR FOUR-YEAR TERMS AND SHALL BE PERSONS WHO POSSESS ACADEMIC TRAINING AND WORK EXPERIENCE IN FIELDS SUCH AS CRIMINOLOGY, EDUCATION, PSYCHOLOGY, PSYCHIATRY, LAW, SOCIAL WORK OR SOCIOLOGY. AT LEAST ONE MEMBER SHALL HAVE PARTICULAR KNOWLEDGE OF NATIVE AMERICAN CULTURE AND PROBLEMS.
2. APPOINTED MEMBERS SHOULD HAVE A HIGH DEGREE OF SKILL IN COMPREHENDING LEGAL ISSUES AND STATISTICAL INFORMATION, AS WELL AS AN ABILITY TO DEVELOP AND PROMULGATE POLICY.
3. COMPENSATION FOR BOARD MEMBERS SHOULD BE AT A RATE EQUAL TO THAT OF A DISTRICT COURT JUDGE, PRO-RATED FOR PART-TIME MEMBERS.
4. NEWLY APPOINTED MEMBERS SHOULD BE GIVEN A THOROUGH ORIENTATION TO THE BOARD'S FUNCTIONS, POLICIES, PROCESSES AND ACTIVITIES. AN ORIENTATION PLAN SHOULD BE ADOPTED BY THE BOARD.
5. BOARD MEMBERS SHOULD BE REQUIRED TO PARTICIPATE IN CONTINUING TRAINING ON A NATIONAL SCALE. EXCHANGE OF PAROLE BOARD MEMBERS AND STAFF MEMBERS WITH OTHER STATES FOR TRAINING PURPOSES SHOULD BE CONSIDERED ESSENTIAL.

IMPLEMENTATION

1. Legislation should be developed to establish requirements and conditions for appointment of board members as recommended.
2. The legislature should increase the compensation of Board of Pardons members to the amount recommended.
3. Adequate funding should be given to the board for orientation and on-going training.

COUNCIL ACTION:

The council deleted sections #1 & 3 of this standard and replaced section #1 with the following wording: "The parole board shall consist of three full-time, paid professional members, appointed for 4 year terms, who have experience in the areas of penology, criminology and corrections." It was felt by the council that a parole board set up in this fashion would be far more effective and efficient than that proposed by the original standard. A great deal of discussion and debate preceded this decision, in which the pros and cons of both alternatives were emphasized. (See colored insert on next page.)

COUNCIL ACTION

ADOPTED VERSION OF STANDARD 11.1

STANDARD 11.1

THE QUALIFICATIONS AND CONDITIONS OF APPOINTMENT OF MEMBERS OF THE BOARD OF PARDONS SHOULD BE SPECIFIED BY STATUTE.

1. THE PAROLE BOARD SHALL CONSIST OF THREE FULL-TIME, PAID PROFESSIONAL MEMBERS, APPOINTED FOR 4 YEAR TERMS, WHO HAVE EXPERIENCE IN THE AREAS OF PENOLOGY, CRIMINOLOGY AND CORRECTIONS.
2. APPOINTED MEMBERS SHOULD HAVE A HIGH DEGREE OF SKILL IN COMPREHENDING LEGAL ISSUES AND STATISTICAL INFORMATION, AS WELL AS AN ABILITY TO DEVELOP AND PROMULGATE POLICY.
3. NEWLY APPOINTED MEMBERS SHOULD BE GIVEN A THOROUGH ORIENTATION TO THE BOARD'S FUNCTIONS, POLICIES, PROCESSES AND ACTIVITIES. AN ORIENTATION PLAN SHOULD BE ADOPTED BY THE BOARD.
4. BOARD MEMBERS SHOULD BE REQUIRED TO PARTICIPATE IN CONTINUING TRAINING ON A NATIONAL SCALE. EXCHANGE OF PAROLE BOARD MEMBERS AND STAFF MEMBERS WITH OTHER STATES FOR TRAINING PURPOSES SHOULD BE CONSIDERED ESSENTIAL.

THE PAROLE GRANT HEARING

ADOPTEDTASK FORCE FINDINGS

The parole board presently averages 25 parole grant hearings per month. Inmates are eligible for parole after serving one-fourth of the sentence, excluding good time.

All cases of denial of parole are reconsidered within one year. Reasons for denial are written and delivered to the inmate immediately following the hearing.

STANDARD 11.2

THE BOARD OF PARDONS SHALL CONTINUE TO DEVELOP POLICIES FOR PAROLE RELEASE HEARINGS THAT INCLUDE OPPORTUNITIES FOR PERSONAL AND ADEQUATE PARTICIPATION BY THE INMATES CONCERNED WHEN FEASIBLE. PROCEDURAL GUIDELINES SHOULD INSURE PROPER, FAIR AND THOROUGH CONSIDERATION OF EVERY CASE. DECISIONS SHOULD BE PROMPT AND NOTIFICATION SHOULD BE MADE PERSONALLY TO THE INMATES. PROVISION SHOULD BE MADE FOR ACCURATE RECORDS OF DELIBERATIONS AND CONCLUSIONS. A PROPER PAROLE GRANT HEARING SHOULD HAVE THE CHARACTERISTICS COVERED UNDER IMPLEMENTATION.

IMPLEMENTATION

1. Initial hearings should be held with inmates by the board hearing officer within two months of reception into the prison. A meaningful and realistic program of rehabilitation should be discussed and agreed upon by the inmate and the institution staff.
2. A policy should be established to hold no more than 20 release hearings in one day.
3. A policy of permitting legal representation of offenders, under rules promulgated by the board, shall be permitted.
4. Detail in writing the reasons for a denial of parole.
5. Appropriate appeal of the decision should be made available to the inmate.

COUNCIL ACTION: Adopted as written.

PAROLE REVOCATION HEARINGS

**AMENDED
ADOPTED**TASK FORCE FINDINGS

The Board of Pardons held 80 parole revocation hearings during fiscal 1975,¹ and 73 such hearings for fiscal 1974.² The majority of parolees returned are for new convictions, and often with technical parole violations as well. Perhaps 20% of those returned are for technical violations of the rules of parole. The board initiated a parole revocation process shortly after the Morrissey decision in 1972 to comply with the due process requirements of that decision. That process is as functional and up-to-date as any in the country.

Presently, the adult parole and probation field services has two hearing officers to conduct on-site hearings for parole violations to afford the parolee the right of due process of law.

STANDARD 11.3

1. THE BOARD OF PARDONS, IN COOPERATION WITH THE CORRECTIONS DIVISION, SHOULD CONTINUE TO IMPROVE THE SYSTEM OF REVOCATION PROCEDURES TO PERMIT PROMPT CONFINEMENT OF ANY PAROLEE WHO EXHIBITS BEHAVIOR THAT POSES A SERIOUS THREAT TO OTHERS. AT THE SAME TIME, THE BOARD AND THE CORRECTIONS DIVISION SHOULD PROVIDE CAREFUL CONTROLS, METHODS OF FACT-FINDING, AND POSSIBLE ALTERNATIVES TO KEEP AS MANY OFFENDERS AS POSSIBLE IN THE COMMUNITY. RETURN TO THE INSTITUTION SHOULD BE A LAST RESORT.
2. ANY PAROLEE ALLEGED TO HAVE COMMITTED A NEW CRIME, BUT WITHOUT OTHER VIOLATIONS OR CONVICTIONS SUFFICIENT TO REQUIRE PAROLE REVOCATION, SHOULD BE ELIGIBLE FOR BAIL OR OTHER RELEASE PENDING THE OUTCOME OF THE NEW CHARGES AS DETERMINED BY THE COURT.
3. IN THE EVENT AN ON-SITE VIOLATION HEARING IS REQUIRED THE PAROLEE SHOULD BE GIVEN PROPER NOTICE OF THE HEARING TIME AND PLACE, AND OF THE ALLEGED VIOLATION. HE HAS THE RIGHT TO PRESENT EVIDENCE, TO CONFRONT AND CROSS-EXAMINE WITNESSES AND TO BE REPRESENTED BY COUNSEL. PAROLE REVOCATION SHOULD NOT BE RECOMMENDED UNLESS THERE IS SUBSTANTIAL EVIDENCE OF SERIOUS VIOLATION OF THE CONDITIONS OF PAROLE.

4. IF SERIOUS AND JUST CAUSE IS FOUND BY THE HEARING EXAMINER, THE PAROLEE IS TO BE RETURNED TO THE INSTITUTE FOR FORMAL PAROLE REVOCATION HEARING BY THE BOARD OF PARDONS WHERE HE AGAIN HAS THE RIGHT TO COUNSEL AND WITNESSES. IF FURTHER INCARCERATION IS WARRANTED THE OFFENDER SHOULD BE SCHEDULED FOR A SUBSEQUENT APPEARANCE FOR PAROLE CONSIDERATION WHEN APPROPRIATE. THERE SHOULD BE NO AUTOMATIC PROHIBITION AGAINST REPAROLE OF A PAROLE VIOLATOR.

IMPLEMENTATION

1. All criminal justice components concerned should be apprised of recommendations in this standard and work for their implementation.

REFERENCE

1. Annual Report of the Board of Pardons, (Fiscal Year 1975).
2. Annual Report of the Board of Pardons, (Fiscal Year 1974), p. 15.

COUNCIL ACTION:

The sentence "Return to the institution should be a last resort." was stricken by the council as they felt common sense and good judgement along with proper application of the law should dictate a violator's return to an institution. The rest of the changes were grammatical in nature. See colored insert on next page.

COUNCIL ACTION

ADOPTED VERSION OF STANDARD 11.3

STANDARD 11.3

1. THE BOARD OF PARDONS, IN COOPERATION WITH THE CORRECTIONS DIVISION, SHOULD CONTINUE TO IMPROVE THE SYSTEM OF REVOCATION PROCEDURES TO PERMIT PROMPT CONFINEMENT OF ANY PAROLEE WHO EXHIBITS BEHAVIOR THAT POSES A SERIOUS THREAT TO OTHERS. AT THE SAME TIME, THE BOARD AND THE CORRECTIONS DIVISION SHOULD PROVIDE CAREFUL CONTROLS, METHODS OF FACT-FINDING, AND POSSIBLE ALTERNATIVES TO KEEP OFFENDERS IN THE COMMUNITY.
2. ANY PAROLEE ALLEGED TO HAVE COMMITTED A NEW CRIME SHOULD BE ELIGIBLE FOR BAIL OR OTHER RELEASE PENDING THE OUTCOME OF THE NEW CHARGES AS DETERMINED BY THE COURT, UNLESS HE HAS COMMITTED A VIOLATION SUFFICIENT TO REQUIRE PAROLE REVOCATION.
3. IN THE EVENT AN ON-SITE VIOLATION HEARING IS REQUIRED THE PAROLEE SHOULD BE GIVEN PROPER NOTICE OF THE HEARING TIME AND PLACE, AND OF THE ALLEGED VIOLATION. HE HAS THE RIGHT TO PRESENT EVIDENCE, TO CONFRONT AND CROSS-EXAMINE WITNESSES AND TO BE REPRESENTED BY COUNSEL. PAROLE REVOCATION SHOULD NOT BE RECOMMENDED UNLESS THERE IS SUBSTANTIAL EVIDENCE OF SERIOUS VIOLATION OF THE CONDITIONS OF PAROLE.

COMMUNITY SERVICES FOR PAROLEES

ADOPTED

TASK FORCE FINDINGS

PROBLEM: One of the major problems of parole officers is the delivery of community resources to the parolee. An inmate upon release from the prison is furnished a suit of clothes and \$25 for his reintegration into society. Furthermore, community services for parolees are inconsistent and oftentimes difficult to coordinate. Significantly, a state-wide directory for community resources is one of the goals of the Board of Pardons for 1976.

STANDARD 11.4

MONTANA SHOULD CONTINUE TO DEVELOP A DIVERSE RANGE OF PROGRAMS TO MEET THE NEEDS OF PAROLEES. THESE SERVICES SHOULD BE DRAWN TO THE GREATEST EXTENT POSSIBLE FROM COMMUNITY PROGRAMS AVAILABLE TO ALL CITIZENS, WITH PAROLE STAFF PROVIDING THE LINK BETWEEN SERVICES AND THE PAROLEES.

STRINGENT REVIEW PROCEDURES SHOULD BE ADOPTED, SO THAT PAROLEES NOT REQUIRING SUPERVISION ARE RELEASED FROM SUPERVISION IMMEDIATELY AND THOSE REQUIRING MINIMAL ATTENTION ARE PLACED IN MINIMUM SUPERVISION CASELOADS.

IMPLEMENTATION

1. The Corrections Division should select and train parole officers to fulfill the role of community resource manager.
2. Parole officers should participate fully in developing a coordinated delivery system of human services.
3. The Department of Institutions should seek legislation that would make state funds available to offenders so that some mechanism may be available to inmates at the time of their release to tide them over until they find a job.
4. Parole officers should develop effective communication at the local level with the Employment Security Division. Joint meetings and training sessions should be undertaken.
5. The Corrections Division should have one person attached to the central office to act as liaison with major program.

- agencies, such as the Department of Social and Rehabilitation Services and the Human Resources Division of the Department of Community Affairs. Funds for the position could be sought from the Montana Board of Crime Control or the legislature.
6. The Corrections Division should support institutional vocational training tied directly to specific subsequent job placements.
 7. The Department of Institutions should encourage its institutions to maintain effective quality control over vocational programs.
 8. The Department of Institutions should make available to parole staff small community-based group homes for prerelease programs, for crises, and as a substitute to recommitment to an institution in appropriately reviewed cases of parole violation.
 9. The Department of Institutions should seek funds from the Montana Board of Crime Control and/or the legislature for parole staffs to purchase needed community resources for parolees.
 10. The Corrections Division should establish special caseloads for offenders with specific types of problems, such as drug or alcohol abuse.

CROSS-REFERENCE RECOMMENDATION

Community Crime Prevention 4.B, "Opportunities Offered by Religious Organizations."

COUNCIL ACTION: Adopted as written.

MEASURES OF CONTROL

ADOPTED

TASK FORCE FINDINGS

Montana's Rules of Parole and Probation contain eight rules of conduct expected of the parolee. Additional conditions that the parole board considers necessary to increase the parolees' chance of success, such as enrollment in Alcoholics Anonymous, may be included by the parole board. Though parole officers are authorized by state law to arrest a parolee,¹ the arrest is generally carried out by a law enforcement officer, except in unusual circumstances. Therefore, parole officers are not required to be armed. Due to a lack of personnel, special caseloads have not been established to insure intensive supervision. In some cases this might be the difference between a parolee succeeding or returning to prison.

STANDARD 11.5

MONTANA SHOULD CONTINUE TO KEEP THE PAROLE RULES AT AN ABSOLUTE MINIMUM, AND TO PROVIDE FOR AN EFFECTIVE MEANS OF ENFORCING THE CONDITIONS ESTABLISHED.

IMPLEMENTATION

1. The Board of Pardons should continue to consider recommendations from correctional staff to establish specific parole conditions for each individual.
2. Parole officers should be able to request the board to amend rules to fit the needs of each case.
3. The Corrections Division should endeavor to establish in Montana's metropolitan areas special caseloads for intensive supervision to be staffed by parole officers of suitable skill and temperament. The division shall also establish careful review procedures to determine which parolees should be assigned or removed from such caseloads.

REFERENCE

1. 94-9839, R.C.M. 1947, "Return of Parole Violator."

COUNCIL ACTION: Adopted as written.

MANPOWER FOR PAROLE

ADOPTED

TASK FORCE FINDINGS

Educational criteria for the position of a parole officer includes a bachelor's degree or a combination of education and experience. In the latter case the officer is encouraged to complete his degree requirements as soon as possible. Parole officers are promoted on performance as well as educational achievement while on the job, so a four-year degree is not mandatory for advancement. PROBLEM: For various reasons it has been difficult to hire and retain members of minority groups and ex-offenders as parole officers in Montana's parole system. Therefore, this problem should receive top priority.

STANDARD 11.6

MONTANA SHOULD DEVELOP A COMPREHENSIVE MANPOWER AND TRAINING PROGRAM WHICH WOULD MAKE IT POSSIBLE TO RECRUIT PERSONS WITH A WIDE VARIETY OF SKILLS, INCLUDING SIGNIFICANT NUMBERS OF EX-OFFENDERS, MINORITY GROUP MEMBERS AND VOLUNTEERS, AND USE THEM EFFECTIVELY IN PAROLE PROGRAMS.

IMPLEMENTATION

The Corrections Division should:

1. Base the allocation of manpower on specific tasks as they relate to different categories of parolees. For instance, parole officers or volunteers skilled in alcohol counseling should assist parolees with alcohol related problems.
2. Require a bachelor's degree for all beginning parole officers.
3. Also employ parole personnel with less than a college degree to work with parole officers on a team basis, carrying out the tasks appropriate to their individual skills.
4. Provide career ladders for advancement of persons with less than college degrees.
5. Recruitment of Indians and ex-offenders should be given high priority consideration for employment.

CROSS-REFERENCE STANDARDS

- | | |
|---|------------------------------------|
| 10.4 "Probation Manpower." | 14.3 "Employment of Women." |
| 14.1 "Recruitment of Correctional Staff." | 14.4 "Employment of Ex-Offenders." |
| 14.2 "Recruitment from Minority Groups." | 14.5 "Utilization of Volunteers." |

COUNCIL ACTION: Adopted as written.

ORGANIZATION OF PAROLING AUTHORITIES

ADOPTEDTASK FORCE FINDINGS

Montana's part-time Parole Board, officially the Board of Pardons, is autonomous from the Department of Institutions. It has jurisdiction over adult felons.

RECOMMENDATION 11-A

MONTANA SHOULD CONTINUE TO MAINTAIN ITS PAROLE BOARD INDEPENDENT OF THE DEPARTMENT OF INSTITUTIONS, CORRECTIONS DIVISION AND THE PRISON. THE BOARD SHOULD BE ATTACHED TO THE DEPARTMENT OF INSTITUTIONS FOR ADMINISTRATIVE PURPOSES ONLY. IT SHOULD BE TOTALLY AUTONOMOUS IN ITS POLICY SETTING AND DECISIONMAKING, AND SHOULD CONTINUE TO HAVE JURISDICTION OVER ADULT OFFENDERS.

1. THE NAME OF THIS AUTHORITY SHOULD MORE APPROPRIATELY BE "THE MONTANA STATE PAROLE BOARD" TO DESIGNATE ITS MAJOR DUTY.
2. THE BOARD SHOULD BE SOLELY RESPONSIBLE FOR FORMULATING AND DEFINING ITS POLICIES IN COMPLIANCE WITH STATE STATUTES.
3. BOARD MEMBERS SHOULD HAVE A CLEAR UNDERSTANDING OF MONTANA'S CORRECTIONAL INSTITUTIONS AND THEIR PROGRAMS.

IMPLEMENTATION

1. The governor should continue to support the independence and autonomy of the parole board.
2. The parole board should continue to establish clearly defined procedures for policy development, hearings and appeals.
3. The title of the paroling authority should be changed by statute from the Board of Pardons to the Parole Board.

COUNCIL ACTION: Adopted as written.

ORGANIZATION AND ADMINISTRATION



CHAPTER 12 - OVERVIEW
ORGANIZATION AND ADMINISTRATION

Since the inception of the Corrections Division on January 1, 1976, Montana now has for the first time, a nearly unified corrections system. Juvenile probation remains under the courts. Until this time the state had, in effect, a fragmented nonsystem of corrections composed of agencies scattered about on the state's organizational chart. Now adult field services and juvenile aftercare will be within the same division, along with the four correctional institutions. This is the opportune time for the establishment of proper organizational and professional management techniques designed to create efficiency and effectiveness within Montana's correctional system.

Strikes by public employees are always of great concern to the public, and especially so when those employees work in corrections. A concerted work stoppage by correctional officers may present a threat to the well being of the inmates and the public safety. Therefore, Recommendation 12-C, "Work Stoppages and Job Actions" recommends that The Corrections Division should provide for continuing operations in case of a strike.

Labor grievances should be prevented by good employee-management relations. Accordingly, employees should have greater participation in determining agency goals and objectives to give them more ownership and pride in their work.

Proper planning constitutes not only the establishment of priorities and goals, but also their realistic evaluation to determine if progress is being made. Accordingly, Recommendation 12-A, "Planning and Organizing," suggests that management not only plan for the future but followup to determine if the plans have been accomplished.

PROFESSIONAL CORRECTIONAL MANAGEMENT

ADOPTEDTASK FORCE FINDINGS

For the first time in its history, Montana will have a nearly unified corrections system (except for juvenile probation) with the advent of the Corrections Division on January 1, 1976. It is imperative that this division be established within the guidelines of professional management.

STANDARD 12.1

A MANAGEMENT STAFF SHOULD ACCOMMODATE AND ENCOURAGE:

1. PARTICIPATION FROM EMPLOYEES IN WORKING UP GOALS AND PROGRAMS.
2. DECISION-MAKING BY EMPLOYEES.
3. FLEXIBILITY TO ORGANIZE EMPLOYEES INTO TEAMS--RECOGNIZING THAT SMALL GROUPS MAY BE MORE PRODUCTIVE THAN INDIVIDUALS WORKING ALONE.
4. MANAGEMENT ORIENTATION TOWARD GOALS RATHER THAN AUTHORITY OR STATUS.

IMPLEMENTATION

The administrator of the Corrections Division and all persons in management positions within that division should implement this standard.

CROSS-REFERENCE STANDARDS

- 13.6, "Personnel Practices for Retaining Staff."
13.7, "Participatory Management."

COUNCIL ACTION: Adopted as written.

PLANNING AND ORGANIZING

ADOPTED

TASK FORCE FINDINGS

It is imperative that the Corrections Division gets off to the right start with proper planning and organization. It is far easier to lay the ground work for this when a new agency is born, rather than having to battle an entrenched bureaucracy to bring about change. Too often employees are not given the opportunity to participate in planning for their organization. A quality planning process should establish realistic objectives that can be evaluated. This in turn should improve the efficiency and effectiveness of the organization.

RECOMMENDATION 12-A

THE CORRECTIONS DIVISION SHOULD DEVELOP AN OPERATIONAL, INTEGRATED PROCESS OF LONG-INTERMEDIATE-AND SHORT-RANGE PLANNING FOR ADMINISTRATIVE AND OPERATION FUNCTIONS.

IMPLEMENTATION

1. Establish a procedure open to as many employees as possible for establishing and reviewing organizational goals and objectives at least annually.
2. Develop a research capability to identify the key social, economic and functional factors that influence the division and attempt to predict their future influences.
3. Develop the capability to monitor, at least annually, progress toward objectives.
4. Establish the competency to determine what support services will be required to carry out the division's plans.
5. The above functions should reside in an organizational unit responsible to the administrator of the Corrections Division.
6. A cost accounting system should be established to classify all offender activities in terms of specific action programs and their cost.

CROSS-REFERENCE STANDARD

14.2, "Evaluating the Performance of the Correctional System."

COUNCIL ACTION: Adopted as written.

EMPLOYEE-MANAGEMENT RELATIONS

ADOPTEDTASK FORCE FINDINGS

Unionization of public employees is becoming more of a reality in Montana. The correctional officers at the prison have formed a union and other employees in corrections have the same opportunity. It is therefore important that correctional management is able to deal fairly and effectively with its employees. This should serve two purposes: (1) Good relations with a union, and (2) make the formation of other unions unnecessary.

RECOMMENDATION 12-B

THE CORRECTIONS DIVISION SHOULD RELATE EFFECTIVELY TO AND NEGOTIATE WITH EMPLOYEES.

IMPLEMENTATION

The Corrections Division should develop a labor management relations capability, which should consist, at a minimum, of the following:

1. All management personnel should receive in-depth training to reduce friction with employees.
2. All employees should be evaluated, in part, on their interpersonal competence and human sensitivity.
3. All managers should receive training in union strategy and tactics, managerial strategies, responses to union demands, labor law and collective bargaining.
4. Top management should develop detailed procedures for responding immediately and effectively to labor-management problems.

CROSS-REFERENCE STANDARDS

- 13.4, "Work Stoppages and Job Actions."
14.6, "Personnel Practices for Retaining Staff."

COUNCIL ACTION: Adopted as written.

WORK STOPPAGES AND JOB ACTIONS

ADOPTEDTASK FORCE FINDINGS

Public employees in Montana have the right to collective bargaining¹ and the right to strike.² A strike by correctional employees could constitute a threat to public and inmate safety.

RECOMMENDATION 12-C

CORRECTIONS SHOULD BE PREPARED TO DEAL WITH ANY CONCERTED WORK STOPPAGE OR JOB ACTION BY CORRECTIONAL EMPLOYEES. FURTHER STEPS MAY BE NECESSARY TO INSURE THAT THE PUBLIC, OTHER CORRECTIONAL STAFF OR INMATES ARE NOT ENDANGERED OR DENIED NECESSARY SERVICES BECAUSE OF A WORK STOPPAGE.

IMPLEMENTATION

The Corrections Division should develop a plan which will provide for continuing correctional operation in the event of an organized employee work stoppage.

CROSS-REFERENCE STANDARD

12-B, "Employee-Management Relations."

REFERENCES

1. 1.59-1604, R.C.M. 1947.
2. State v. Public Employees Kraft Counselors, 529 Pacific Second Reporter 705 (Montana Supreme Court Number 1200 765).

COUNCIL ACTION: Adopted as written.

MANPOWER



CHAPTER 13

MANPOWER

OVERVIEW

Good employees are the cornerstone of corrections. Without the firm foundation of competent and dedicated manpower to build upon, the standards and recommendations of this report will be for naught. Most of the standards are aimed at administrative procedure, so the good will and progressiveness of the men and women in Montana's corrections system are a must if the report is to be implemented. Sought-after fancy equipment, modern programs and liberal funding are wasted without the proper manpower to put them to use in an effective manner.

The retention of trained staff was a concern in 1875, just as it is today. The following is an excerpt from a letter by William F. Wheeler, U.S. Marshall in the Montana Territory and superintendent of the U.S. Penitentiary at Deer Lodge, to Edwards Pierripout, the U.S. Attorney General.

They (the guards) get \$60 per month and their board. Our miners average \$4 per day and room themselves, but do not have constant employment. As it is I have frequently to employ new guards. Some cannot stand the close confinement and some can get better wages.----I think they should have \$75 and recommend this increase in pay and the employment of one more guard.¹

His concern for the additional manpower was valid, because he closed his letter with the observation that a prisoner had escaped that day by vaulting the 12 foot high fence that

surrounded the prison at that time. Corrections is still concerned with retaining employees, and this is reflected by Standard 13.5, "Personnel Practices," which states that competitive salaries shall be paid and that personnel practices should create a favorable organizational climate. This is in sharp contrast to the strict rules for guards in the 19th century:

While within the prison, the guards shall refrain from singing, whistling, loud talking, immoderate or loud laughter, scuffling, exciting discussions and all other acts calculated to disturb the quiet harmony and good order of the prison.²

If manpower is the cornerstone of corrections, then recruiting is its life line. As corrections in Montana seeks to hire men and women from diversified backgrounds and lifestyles, Standards 13.1 - 13.4 specify the policies necessary to attract Indians, women, ex-offenders and volunteers to corrections. All of these people are necessary if correctional programming is to be realistically implemented to meet the needs of the offenders. Volunteers have displayed their value in filling the manpower gaps in Montana, especially in providing one-on-one relationships with adults and juveniles.

Training is recognized as vitally important to teach new employees their jobs and to continually expose the older employees to new correctional concepts. It is for this reason that Standard 13.8 mandates that new correctional employees receive orientation and additional training during their first year.

Annual refresher training is also recommended for all other staff members to give them the best possible foundation for their jobs.

Criminal justice education has made inroads in Montana, with most colleges and universities offering at least some courses if not degrees in the field. This is important enough to be coordinated through a state plan, as stated in Standard 13.7. Interns and work-study programs provide students with invaluable experience in the criminal justice system, and it should give corrections a fertile ground for recruitment.

REFERENCES

1. Letter, William F. Wheeler to E. Pierripout, August 18, 1875, Montana Historical Library, Letterbook, Volume 2.
2. Rules for Prison Guards, Montana Historical Library, Microfilm 24, Reel 2 (a).

RECRUITMENT FROM MINORITY GROUPS

ADOPTED

TASK FORCE FINDINGS

Approximately 14% of the prison population is Indian, which emphasizes the need for more Native American representation in corrections. Indian correctional employees, through their cultural background, would be accutely aware of the problems and needs of Indians. Recruitment of Indians into Montana's corrections system is important if Indians are to be given equal opportunity. If examinations are thought to be necessary, outside assistance should be enlisted to ensure that all tests, written and oral, are related to the job and not culturally biased.

STANDARD 13.1

AFFIRMATIVE ACTION SHOULD BE TAKEN TO RECRUIT AND EMPLOY MINORITY GROUP MEMBERS FOR ALL POSITIONS.

1. ALL ARBITRARY OBSTACLES TO EMPLOYMENT SHOULD BE ELIMINATED.
2. ALL JOB QUALIFICATIONS AND HIRING POLICIES SHOULD BE REEXAMINED WITH THE ASSISTANCE OF EQUAL EMPLOYMENT SPECIALISTS FROM OUTSIDE THE HIRING AGENCY.
3. INTENSIVE AND COMPREHENSIVE TRAINING PROGRAMS SHOULD BE DESIGNED TO SUPPLEMENT EDUCATIONAL AND EXPERIENCE REQUIREMENTS.

IMPLEMENTATION

1. The Corrections Division should make every effort to recruit minorities.

CROSS-REFERENCE RECOMMENDATION

Recommendation 7-B, "Corrections Responsibility for Citizen Involvement."

COUNCIL ACTION: Adopted as written.

EMPLOYMENT OF WOMEN

ADOPTED

TASK FORCE FINDINGS

Traditionally, women were not considered as correctional employees except as matrons and secretaries. The concept of Equal Opportunity has changed that, and increasingly women are seeking non-traditional jobs throughout the criminal justice system. To facilitate the acceptance of women as employees, correctional administrators should be educated to change the stereotyped attitudes, images and expectations of women. Special seminars should deal with the problems women face in entering non-traditional jobs and the stereotypes that restrict employment opportunities. Jobs should be categorized using non-sexist language, and the availability of all positions should be widely advertised.

STANDARD 13.2

1. EMPLOYMENT SHOULD BE BASED ON ABILITY RATHER THAN SEX.
2. ALL EMPLOYEES, REGARDLESS OF THEIR SEX, SHOULD BE GIVEN EQUAL PAY FOR EQUAL WORK, EQUAL TRAINING OPPORTUNITIES, AND PROMOTED FOR THEIR ABILITY AND PERFORMANCE.
3. POLICIES SHOULD PROVIDE FOR THE LATERAL ENTRY TO ALLOW IMMEDIATE PLACEMENT OF WOMEN IN ADMINISTRATIVE POSITIONS.

IMPLEMENTATION

1. The Corrections Division should expand employment opportunities for women. Policies and programs must be developed to meet the specific needs of women employees.
2. The Corrections Division should collect and maintain accurate statistics on hiring, job classification, salary and promotion of women.

COUNCIL ACTION: Adopted as written.

EMPLOYMENT OF EX-OFFENDERS

ADOPTED

TASK FORCE FINDINGS

Ex-offenders have the potential for becoming valuable correctional employees because they have been involved in corrections programs. Properly selected, they could bring to corrections an empathy and understanding that training and education cannot provide.

STANDARD 13.3

AFFIRMATIVE ACTION SHOULD BE TAKEN TO RECRUIT
AND EMPLOY CAPABLE AND QUALIFIED EX-OFFENDERS
IN CORRECTIONS.

IMPLEMENTATION

1. Policies and practices restricting the hiring of ex-offenders should be reviewed. If found to be unreasonable, they should be changed or eliminated.
2. Qualified applicants should be encouraged to apply.
3. Training programs should be developed to prepare ex-offenders to work in various correctional positions, and career development should be extended to them so they can advance in the system.

COUNCIL ACTION: Adopted as written.

UTILIZATION OF VOLUNTEERS

ADOPTED

TASK FORCE FINDINGS

The volunteer helps the parolee in the crucial readjustment phase by directing him to community services and by actively listening to his problems. "Community involvement in corrections is invaluable to our rehabilitative efforts, and also serves to educate the community as to the problems faced by men leaving the Montana State Prison."¹ Juvenile corrections is effectively using volunteers in programs.

It is important that there is an adequate system to screen, select, train and supervise volunteers. Training is of considerable importance, because it should give volunteers an understanding of the needs and lifestyles common to offenders and to acquaint them with the objectives and problems of corrections.

STANDARD 13.4

1. VOLUNTEERS FROM ALL RANKS OF LIFE SHOULD BE USED AS A VALUABLE ADDITIONAL RESOURCE IN CORRECTIONAL PROGRAMS.
2. AFTER PROPER SELECTION, TRAINING SHOULD BE PROVIDED TO VOLUNTEERS TO ACQUAINT THEM WITH THE PROBLEMS AND OBJECTIVES OF THE PROGRAM.

IMPLEMENTATION

1. Volunteers should be recruited by the Corrections Division from the ranks of Indians, the poor, ex-offenders who can serve as success models, and professionals who can bring special expertise to the field.
2. A paid volunteer coordinator should be provided for efficient program operation.
3. Special recognition should be given to volunteers making an exceptional contribution to an agency.

REFERENCES

1. Tower Seven pamphlet, p. 3.

COUNCIL ACTION: Adopted as written.

PERSONNEL PRACTICES

ADOPTEDTASK FORCE FINDINGS

Good employees are not easily found and sometimes more difficult to keep, unless policies are flexible and reward efficiency and productivity. Jobs well done should be appropriately recognized. Excessive and unnecessary paperwork should be eliminated, along with chains of command that are too rigidly structured. The objective should be to aid communication and decisionmaking to encourage initiative and innovation. But above all, salaries and promotions must reflect responsibility and productivity if correctional management is to retain valued employees.

STANDARD 13.5

1. PERSONNEL PRACTICES SHOULD CREATE A FAVORABLE ORGANIZATIONAL CLIMATE AND ELIMINATE LEGITIMATE CAUSES OF EMPLOYEE DISSATISFACTION TO RETAIN CAPABLE STAFF.
2. SALARIES SHOULD BE COMPETITIVE WITH THE REST OF THE CRIMINAL JUSTICE SYSTEM AND COMPARABLE POSITIONS IN THE PRIVATE SECTOR. SALARY INCREASES, BASED ON MERIT AND A PENSION PLAN SHOULD BE AVAILABLE.
3. THERE SHOULD BE PROMOTION OPPORTUNITIES THAT ALLOW LATERAL ENTRY AND MOBILITY ACROSS JURISDICTIONAL LINES.

IMPLEMENTATION

The Corrections Division should seek to retain its best employees through this standard.

COUNCIL ACTION: Adopted as written.

CRIMINAL JUSTICE EDUCATION

ADOPTED

TASK FORCE FINDINGS

Criminal justice education is important because it provides a pool of educated potential employees for Montana's criminal justice system. A state plan should be formulated to plan for criminal justice education. Educational leaders, state planners and members of the criminal justice system should meet to chart current and future statewide distribution and location of academic programs, based on proven needs and resources. As part of a recruiting effort, graduates of criminal justice education should be assisted in finding a proper job.

STANDARD 13.6

A STATE PLAN SHOULD COORDINATE CRIMINAL JUSTICE EDUCATION TO:

1. ASSURE A SOUND ACADEMIC CONTINUUM FROM AN ASSOCIATE OF ARTS DEGREE THROUGH GRADUATE STUDIES IN CRIMINAL JUSTICE.
2. ALLOCATE EDUCATION RESOURCES TO SECTIONS OF THE STATE WITH DEFINED NEEDS.
3. WORK TOWARD PROPER PLACEMENT OF PERSONS COMPLETING THESE PROGRAMS.
4. BE RELEVANT TO THE NEEDS OF THE PEOPLE IN THE FIELD.

IMPLEMENTATION

1. The Commissioner of Higher Education should be asked to formulate and implement the plan.
2. The Corrections Division and all local correctional agencies should be encouraged to provide adequate incentives for participation in higher education programs.

COUNCIL ACTION: Adopted as written.

INTERN AND WORK-STUDY PROGRAMS

ADOPTED

TASK FORCE FINDINGS

Quality intern and work-study programs are invaluable to corrections because they train prospective employees and serve as a recruiting tool. These programs should provide the experience and training necessary for the students to make realistic judgments about corrections, and once hired they will have a foundation of experience not available to the average new employee. It is imperative to the professionalism of corrections to maintain effective intern and work-study programs in Montana.

STANDARD 13.7

WORK-STUDY PROGRAMS MUST INCLUDE:

1. RECRUITMENT THAT CONCENTRATES ON MINORITIES, WOMEN AND SOCIALLY CONCERNED STUDENTS.
2. A LINK BETWEEN THE STUDENT'S SCHOOL, WORK AND PRACTICAL EXPERIENCES.
3. COOPERATIVE PLANNING FOR PROGRAM OBJECTIVES AGREEABLE TO UNIVERSITY FACULTY, STUDENT INTERNS AND AGENCY STAFF.
4. EVALUATION OF EACH PROGRAM.
5. REALISTIC PAY FOR STUDENTS.
6. FOLLOW UP TO ENCOURAGE STUDENTS TO SEEK A JOB IN CORRECTIONS.

IMPLEMENTATION

1. Correctional agencies should plan, support and implement internship and work-study programs to attract students to corrections as a career and improve relations between educators and practitioners.
2. Universities and colleges should support and implement these programs.

COUNCIL ACTION: Adopted as written.

TRAINING

ADOPTED

TASK FORCE FINDINGS

Training has the utmost importance within any organization because it essentially achieves two ends: (1) It prepares recruits to do their job, and (2) training insures continued growth of veteran employees. Training should be the responsibility of management and it should provide staff with the skills and knowledge to fulfill organizational goals and objectives. To the fullest extent possible, training should include all members of the organization. The training sessions should be conducted at the organization site and also in community settings.

STANDARD 13.8

1. ALL TOP AND MIDDLE MANAGERS SHOULD HAVE CONTINUING EXECUTIVE DEVELOPMENT TRAINING, INCLUDING TRAINING IN THE OPERATIONS OF POLICE, COURTS, PROSECUTION AND DEFENSE ATTORNEYS.
2. ALL NEW STAFF MEMBERS SHOULD HAVE ADDITIONAL ORIENTATION TRAINING DURING THEIR FIRST WEEK ON THE JOB AND TRAINING DURING THEIR FIRST YEAR.
3. ALL STAFF MEMBERS, AFTER THEIR FIRST YEAR, SHOULD HAVE CONTINUED TRAINING EACH YEAR TO KEEP THEM ABREAST OF THE CHANGING NATURE OF THEIR WORK AND INTRODUCE THEM TO CURRENT ISSUES AFFECTING CORRECTIONS.

IMPLEMENTATION

1. Qualified trainers should develop and direct the program.
2. Training funds should continue from the Board of Crime Control, but the Corrections Division and local correctional agencies must assume support as rapidly as possible.
3. Training resources should be drawn from higher education.
4. Sabbatical leaves should be granted for correctional personnel to teach or attend courses in colleges and universities.

COUNCIL ACTION: Adopted as written.

PARTICIPATORY MANAGEMENT

ADOPTEDTASK FORCE FINDINGS

One person cannot see all sides of a tower no matter how powerful their vision because they have only one perspective. And so it is with top management. One needs the participation of his employees if he is to appreciate all of the aspects of a situation or problem. It is nearly impossible for management to set realistic objectives without the ideas and opinions of the people who are expected to reach the goals. Offenders could be useful in this process as well, within properly prescribed limits.

RECOMMENDATION 13-A

A PROGRAM OF PARTICIPATORY MANAGEMENT SHOULD INCLUDE EVERYONE INVOLVED IN CORRECTIONS, (MANAGERS, STAFF AND OFFENDERS) TO SHARE IN IDENTIFYING PROBLEMS, FINDING MUTUALLY AGREEABLE SOLUTIONS, SETTING GOALS AND OBJECTIVES, FINDING NEW ROLES FOR PARTICIPANTS AND EVALUATING THE EFFECTIVENESS OF THESE PROCESSES.

IMPLEMENTATION

This recommendation should be adopted by the Corrections Division in full recognition of its legal and responsible position of management.

COUNCIL ACTION: Adopted as written.

ADOPTED

RECRUITING AND RETAINING PROFESSIONAL PERSONNEL

TASK FORCE FINDINGS

It is of monumental importance to corrections in Montana that there is no political patronage in recruiting practices. Professionals must be attracted and selected to the state's top correctional positions if the system is to be progressive.

RECOMMENDATION 13-B

TOP MANAGEMENT CORRECTIONAL POSITIONS SHOULD ATTRACT PROFESSIONALS AND BE PROTECTED FROM POLITICAL PATRONAGE.

IMPLEMENTATION

Legislation is required to protect top corrections' positions from patronage.

COUNCIL ACTION: Adopted as written.

**RESEARCH
AND
DEVELOPMENT**

OVERVIEW

CHAPTER 14

RESEARCH AND DEVELOPMENT

Research and development programs are of paramount importance if the corrections system ever hopes to deal with criminals effectively. The development of a correctional data base is necessary to make intelligent correctional decisions. It will also be used to prepare reports as well as to evaluate correctional programs.

Corrections information should give the public and correctional administrators a better perspective of corrections and an insight into its effectiveness. Research and development is vitally important if corrections in Montana is to remain progressive. It is equally important that corrections have the means to carefully evaluate its processes.

Evaluation of corrections invariably leads to the word, "recidivism", a vague term, seldom defined and subject to criticism for lack of a strict definition. Standard 14.3 defines "recidivism."

Corrections is severely handicapped without a good data base. It is in recognition of this that the following three standards are presented concerning planning and evaluation.

Please see Chapter 4 of the Information Systems Task Force for its four standards on the Corrections Information Systems, and Chapter 1 of the same report, Criminal Justice Information Systems Development.

DEFINITION OF RECIDIVISM

ADOPTED

TASK FORCE FINDINGS

A general consensus of a definition of recidivism has never been obtained. Therefore, different states have different definitions, so one may look better than another in terms of its recidivism rate. Montana State Prison currently defines recidivism as a return to the prison within a year of release on a new felony conviction or parole violation.

The Corrections Task Force believes that the following definition of recidivism is mandatory if Montana is ever to properly evaluate its entire corrections system.

STANDARD 14.1

RECIDIVISM IS MEASURED BY:

1. CRIMINAL ACTS THAT RESULTED IN CONVICTION BY A COURT, WHEN COMMITTED BY INDIVIDUALS WHO ARE UNDER CORRECTIONAL SUPERVISION OR WHO HAVE BEEN RELEASED FROM CORRECTIONAL SUPERVISION WITHIN THE PREVIOUS THREE YEARS.
2. TECHNICAL VIOLATIONS OF PROBATION OR PAROLE IN WHICH A SENTENCING OR PAROLING AUTHORITY TOOK ACTION THAT RESULTED IN THE RETURN OF THE OFFENDER TO INSTITUTIONAL STATUS.

TECHNICAL VIOLATIONS SHOULD BE MAINTAINED SEPARATELY FROM DATA ON RECONVICTIONS. ALSO, RECIDIVISM SHOULD BE REPORTED IN A MANNER TO DISCERN PATTERNS OF CHANGE. AT A MINIMUM, STATISTICAL TABLES SHOULD BE PREPARED EVERY SIX MONTHS DURING THE THREE-YEAR FOLLOWUP PERIOD, SHOWING THE NUMBER OF RECIDIVISTS. DISCRIMINATIONS BY AGE, OFFENSE, LENGTH OF SENTENCE AND DISPOSITION SHOULD BE PROVIDED.

IMPLEMENTATION

The Department of Institutions should implement this standard.

CROSS REFERENCE STANDARDS

Standard 14.2, "Evaluating the Performance of the Correctional System."

Information Systems Chapter 4, Corrections Information Systems.

COUNCIL ACTION: Adopted as written.

EVALUATING THE PERFORMANCE OF THE CORRECTIONAL SYSTEM

ADOPTEDTASK FORCE FINDINGS

The effectiveness of corrections and correctional programs have been frequently questioned and, at times, fiercely criticized. Often this is done without hard data at the disposal of the critics, or to correctional administrators. Without this there can be little constructive criticism. Evaluation of corrections and its programs is essential if administrators and the public are to become aware of the effectiveness of the system. Old programs should be evaluated to determine if they should continue, and the evaluation data can be used by administrators to seek continued or additional funding. Evaluation is an integral part of research and development of new programs. The public has a right to know about the effectiveness of correctional programs in order to make corrections more accountable to the people it is charged to protect.

STANDARD 14.2

THE CORRECTIONS DIVISION SHOULD BEGIN TO EVALUATE PERFORMANCE IN TWO WAYS:

- (1) OVERALL PERFORMANCE OR SYSTEM REVIEWS
AS MEASURED BY RECIDIVISM AND
- (2) THE MEASURE OF MORE IMMEDIATE PROGRAM
GOAL ACHIEVEMENT.

AGENCIES ALLOCATING FUNDS FOR CORRECTIONAL PROGRAMS SHOULD REQUIRE SUCH MEASUREMENTS.

IMPLEMENTATION

1. For system reviews, measurement of recidivism should be a primary yardstick for evaluation.
2. Program review is a more specific type of evaluation, including:
 - a) Measurement of effort.
 - b) Measurement of performance.
 - c) Determination of adequacy of performance.
 - d) Determination of efficiency.
 - e) Study of process.
3. Success should be based upon individuals that were actually involved in a program, rather than offenders not reported in recidivism figures.

CROSS-REFERENCE STANDARD

14.1, "Definition of Recidivism."

COUNCIL ACTION: Adopted as written.

DEVELOPMENT OF A CORRECTIONAL DATA BASE

ADOPTEDTASK FORCE FINDINGS

It is imperative that the administrator of the Corrections Division have the necessary information at his disposal to make enlightened decisions about correctional policies and programs. This information should facilitate the preparation of reports, as well as the evaluation of correctional programs.

RECOMMENDATION 14-A

MONTANA'S CORRECTIONAL DATA BASE SHOULD CONTAIN ELEMENTS THAT PRODUCE INFORMATION NECESSARY FOR DECISIONS. TO SATISFY THE SERVICE NEEDS, THE DATA BASE SHOULD BE COMPOSED OF INDIVIDUAL RECORDS, EACH MADE UP OF STANDARDIZED ELEMENTS OF CODABLE DATA.

IMPLEMENTATION

The Department of Institutions should support this recommendation to insure that the data base provides the Corrections Division with useful information and statistics for research and development.

CROSS REFERENCE STANDARDS

Information Systems Standard 1.3, "Uniform Classification of Data," and Chapter 4, Corrections Information Systems.

COUNCIL ACTION: Adopted as written.

COUNCIL ACTION

re:

MINORITY REPORT

All of the presented standards and recommendations
in this minority report were rejected by the council.

REJECTED

ADDENDUM

Minority Report

by

Richard Vandiver, Ph.D.

March, 1975

It is with considerable trepidation that I submit a minority opinion to the Task Force on Corrections Report. I wholeheartedly support many of the standards in final form. I have found it necessary to compromise some important principles in supporting various modifications in the final version of the standards. I have found only a few issues on which I simply could not compromise my principles and support the modifications or the strategy of the Task Force majority.

I have taken the work of the Task Force on Corrections seriously and promoted its efforts in the legislature, in public forums and among students at the University of Montana. I submit a minority report because after having tried to work "within the system" I have found that process not always amenable to promoting much needed change and reorientation.

Specifically I take exception from the majority opinion on the following issues:

1. Some of the national standards were omitted from the Montana report because the majority was convinced that since the substance of these standards is already in Montana law it is not necessary to affirm standards which are currently a part of the law.

I disagree with this point of view since I know that law is subject to change based on political considerations rather than professional correctional judgment. In my opinion, the standards in the final report represent the judgment of the Task Force. We should affirm what we believe to be good practice. On this basis I am requesting that standards 5.11 and 5.18 as originally adopted by the Task Force and standard 8.2 as adopted by the National Corrections Task Force be

included in the minority report.*

2. Some standards were rejected because the substance of them was prohibited by current Montana law. I likewise disagree with this point of view since I recognize the changeability of law as independent from professional judgment. In fact, as I have argued in Task Force meetings, I believe the law should be changed if professional judgment indicates a compelling reason. In my opinion too much Task Force time was devoted to second guessing the legislature. I am, therefore, requesting the inclusion of National standard 5.9* and the proposed standard amendments on shock probation and shock parole.
3. One particular standard was initially adopted by a majority of the Task Force but rejected following extensive lobbying by the assistant director of the Montana Justice Project who was not a member of the Task Force. Another standard was not modified in spite of a more moderate, rational presentation by another staff member of the Montana Justice Project who also was not a member of the Task Force. I not only disagree with the substance of the final decision of the Task Force in these two cases, I deplore the differential treatment accorded these persons. I therefore am requesting that proposed standard 1.19* and the proposed amended standard 1.17* be included in this minority report.
4. One proposed standard requiring environmental, economic and social impact statements be prepared prior to the construction or major modification of correctional facilities was rejected because it

*See appendix for the text of these standards.

was "outside the correctional area" and was "not practical."

I disagree with this decision because I find it to be inconsistent with many other decisions made by the Task Force. I also believe this standard is in the interest of the public even though it may require some additional effort by correctional administrators. In my opinion modification and construction of correctional facilities involving expenditures of public monies should be done with maximum feasible understanding of their potential impact on the communities in which they exist. I therefore am requesting that the proposed standard 11.12* be included in this minority report.

In conclusion, I believe that there is clear recognition around this country and within the state of Montana that the correctional arm of the criminal justice system is not living up to expectations. The entire system has failed in very basic ways to produce what persons within the system have promised. I have consistently maintained that we need to take an objective, rather than a self-protective, view of the system in order to bring the kind of basic alteration in our correctional system that will more nearly produce what has been promised. In many important ways we have affirmed recommendations and standards which will encourage these changes. To realistically produce these changes, however, the standards and recommendations will have to be implemented rather than simply given verbal support. In many other ways the Task Force has been unwilling to accept changes, even though there is ample evidence that the old established, protected procedures have not produced desired results. In my opinion, administrative expediency, ^{fear of} legislative conservatism, and our inability to see currently available resources should not preclude our promotion of the best possible standards and recommendations which our professional judgment and

objective evaluation based on evidence from Montana and elsewhere would suggest.

APPENDIX

SENTENCING EQUALITY

STANDARD 5.11

MONTANA'S SENTENCE REVIEW BOARD SHOULD CONSIST OF NOT LESS THAN THREE NOR MORE THAN SEVEN MEMBERS WHO WOULD SERVE STAGGERED SIX YEAR TERMS. APPOINTMENT SHOULD BE MADE THROUGH A PROCEDURE THAT ASSURES COMPETENCE AND PROTECTS AGAINST POLITICAL PRESSURES AND PATRONAGE.

PRECEDURES FOR THE REVIEW OF SENTENCES ON APPEAL SHOULD CONTAIN THE FOLLOWING RULES:

1. APPEAL OF A SENTENCE SHOULD BE A MATTER OF RIGHT.
2. APPEAL OF A SENTENCE OR LONGER THAN FIVE YEARS UNDER AN EXTENDED-TERM PROVISION SHOULD BE AUTOMATIC.
3. A STATEMENT OF ISSUES FOR WHICH REVIEW IS AVAILABLE SHOULD BE MADE PUBLIC. THE ISSUES SHOULD INCLUDE:
 - a. WHETHER THE SENTENCE IMPOSED IS CONSISTENT WITH STATUTORY CRITERIA.
 - b. WHETHER THE SENTENCE IS UNJUSTIFIABLY DISPARATE IN COMPARISON WITH CASES OF SIMILAR NATURE.
 - c. WHETHER THE SENTENCE IS EXCESSIVE OR INAPPROPRIATE.
 - d. WHETHER THE MANNER IN WHICH THE SENTENCE IS IMPOSED IS CONSISTENT WITH STATUTORY AND CONSTITUTIONAL REQUIREMENTS.

SENTENCING HEARING - ROLE OF COUNSEL

STANDARD 5.18

1. IT SHOULD BE THE DUTY OF BOTH THE PROSECUTOR AND DEFENSE COUNSEL TO:
 - a. AVOID ANY UNDUE PUBLICITY ABOUT THE DEFENDANT'S BACKGROUND.
 - b. CHALLENGE AND CORRECT, AT THE HEARING, ANY KNOWN INACCURACIES CONTAINED IN THE PRESENTENCE REPORT.
 - c. INFORM THE COURT, WHEN REQUESTED, OF ANY PLEA DISCUSSION WHICH RESULTED IN THE DEFENDANT'S GUILTY PLEA.
 - d. VERIFY, TO THE EXTENT POSSIBLE, ANY INFORMATION IN THE PRESENTENCE REPORT.
2. THE PROSECUTOR MAY MAKE RECOMMENDATIONS WITH RESPECT TO SENTENCE. HE SHOULD DISCLOSE TO DEFENSE COUNSEL ANY INFORMATION HE HAS THAT IS FAVORABLE OR UNFAVORABLE TO THE DEFENDANT AND IS NOT CONTAINED IN THE PRESENTENCE REPORT.
3. IT SHOULD BE THE DUTY OF THE DEFENSE COUNSEL TO PROTECT THE BEST INTEREST OF HIS CLIENT. HE SHOULD CONSIDER NOT ONLY THE IMMEDIATE BUT ALSO THE LONG-RANGE INTEREST IN AVOIDING FURTHER INCIDENTS WITH THE CRIMINAL JUSTICE SYSTEM. HE SHOULD, TO THIS END:
 - a. IMPEACH ANY ELEMENTS IN THE PRESENTENCE REPORT OR THE TESTIMONY OF THE PERSONS WHO CONTRIBUTED TO THE PREPARATION OF THE REPORT WHERE THOSE ELEMENTS OR PERSONS TEND TOWARD BIAS OR PREJUDICE.
 - b. FAMILIARIZE HIMSELF WITH SENTENCING ALTERNATIVES AND COMMUNITY SERVICES AVAILABLE TO HIS CLIENT AND, TO THE EXTENT CONSISTENT WITH HIS POSITION AS AN OFFICER OF THE COURT AND A SERVANT OF SOCIETY, RECOMMEND THAT SENTENCE WHICH MOST ACCURATELY MEETS THE NEEDS OF HIS CLIENT AND ENHANCES HIS LIBERTY.

Standard 8.2

Juvenile Intake Services

Each juvenile court jurisdiction immediately should take action, including the pursuit of enabling legislation where necessary, to establish within the court organized intake services operating as a part of or in conjunction with the detention center. Intake services should be geared to the provision of screening and referral intended to divert as many youngsters as possible from the juvenile justice system and to reduce the detention of youngsters to an absolute minimum.

1. Intake personnel should have authority and responsibility to:

a. Dismiss the complaint when the matter does not fall within the delinquency jurisdiction of the court or is so minor or the circumstances such that no intervention is required.

b. Dismiss complaints which seem arbitrary, vindictive, or against the best interests of the child.

c. Divert as many youngsters as possible to another appropriate section of the court or to alternative programs such as mental health and family services, public welfare agencies, youth service bureaus, and similar public and private agencies.

2. Intake personnel should seek informal service dispositions for as many cases as possible, provided the safety of the child and of the community is not endangered. Informal service denotes any provision for continuing efforts on the part of the court at disposition without the filing of a petition, including:

a. Informal adjustments.

b. Informal probation.

c. Consent decrees.

3. Informal service dispositions should have the following characteristics:

a. The juvenile and his parents should be advised of their right to counsel.

b. Participation by all concerned should be voluntary.

c. The major facts of the case should be undisputed.

d. Participants should be advised of their right to formal adjudication.

e. Any statements made during the informal process should be excluded from any subsequent formal proceeding on the original complaint.

f. A reasonable time limit (1 to 2 months) should be adhered to between date of complaint and date of agreement.

g. Restraints placed on the freedom of juveniles in connection with informal dispositions should be minimal.

h. When the juvenile and his parents

agree to informal proceedings, they should be informed that they can terminate such dispositions at any time and request formal adjudication.

4. Informal probation is the informal supervision of a youngster by a probation officer who wishes to reserve judgment on the need for filing a petition until after he has had the opportunity to determine whether informal treatment is sufficient to meet the needs of the case.

5. A consent decree denotes a more formalized order for casework supervision and is neither a formal determination of jurisdictional fact nor a formal disposition. In addition to the characteristics listed in paragraph 3, consent decrees should be governed by the following considerations:

a. Compliance with the decree should bar further proceedings based on the events out of which the proceedings arose.

b. Consummation of the decree should not result in subsequent removal of the child from his family.

c. The decree should not be in force more than 3 to 6 months.

d. The decree should state that it does not constitute a formal adjudication.

e. No consent decree should be issued without a hearing at which sufficient evidence appears to provide a proper foundation for the decree. A record of such hearing should be kept, and the court in issuing the decree should state in writing the reasons for the decree and the factual information on which it is based.

6. Cases requiring judicial action should be referred to the court.

a. Court action is indicated when:

(1) Either the juvenile or his parents request a formal hearing.

(2) There are substantial discrepancies about the allegations, or denial, of a serious offense.

(3) Protection of the community is an issue.

(4) Needs of the juvenile or the gravity of the offense makes court attention appropriate.

b. In all other instances, court action should not be indicated and the juvenile should be diverted from the court process. Under no circumstances should children be referred to court for behavior that would not bring them before the law if they were adults.

Under the supervision of the court, review and monitoring procedures should evaluate the effectiveness of intake services in accomplishing the diversion of children from the juvenile justice system and re-

ducing the use of detention, as well as appropriateness and results of informal dispositions.

7. Predetention screening of children and youths referred for court action should place into their parental home, a shelter, or nonsecure residential care as many youngsters as may be consistent with their needs and the safety of the community. Detention prior to adjudication of delinquency should be based on these criteria:

a. Detention should be considered a last resort where no other reasonable alternative is available.

b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings.

c. Detention decisions should be made only by court or intake personnel, not by police officers.

d. Prior to first judicial hearing, the juvenile ordinarily should not be detained longer than overnight.

e. Juveniles should not be detained in jails, lockups, or other facilities used for adults.

Standard 5.9

Continuing Jurisdiction of Sentencing Court

Legislatures by 1975 should authorize sentencing courts to exercise continuing jurisdiction over sentenced offenders to insure that the correctional program is consistent with the purpose for which the sentence was imposed. Courts should retain jurisdiction also to determine whether an offender is subjected to conditions, requirements, or authority that are unconstitutional, undesirable, or not rationally related to the purpose of the sentence, when an offender raises these issues.

Sentencing courts should be authorized to reduce a sentence or modify its terms whenever the court finds, after appropriate proceedings in open court, that new factors discovered since the initial sentencing hearing dictate such modification or reduction or that the purpose of the original sentence is not being fulfilled.

Procedures should be established allowing the offender or the correctional agency to initiate proceedings to request the court to exercise the jurisdiction recommended in this standard.

Standard 16.8-2-i (Shock probation)

Retention by the court of sentencing jurisdiction for a period of 90 days after incarceration with authority reserved during such period to suspend all or a part of the execution of the sentence under stated conditions. Such authority shall be applied to first felony offenders only.

(Shock parole) See Standard 5.3-6

Add sentence: "The authority shall not be exercised to reduce incarceration under a minimum sentence to a period of less than six months."

ACCESS TO THE PUBLIC

TASK FORCE FINDINGS

Because practically all offenders return to their communities, we believe that access to the public may help offenders and prepare them for release. Readjusting to society is hopefully hastened if all ties with family, friends and the public are not broken. We believe that the media should be accommodated as much as practically possible during an institutional disturbance. This will permit objective reporting and prevent rumors from becoming news.

STANDARD 1.17

OFFENDERS SHOULD HAVE THE RIGHT TO BE IN TOUCH WITH THE PUBLIC.

1. MAIL: UNLESS THERE IS A THREAT TO THE SECURITY AND CONTROL OF THE INSTITUTION, OFFENDERS SHOULD HAVE THE RIGHT TO TALK OR WRITE TO PERSONS OR ORGANIZATIONS AND TO SEND AND RECEIVE LETTERS, PACKAGES, BOOKS, PERIODICALS, AND ANY OTHER MATERIAL THAT CAN BE LAWFULLY MAILED.
 - a. THE VOLUME OF MAIL TO OR FROM AN OFFENDER SHOULD NOT BE LIMITED.
 - b. CORRECTIONAL AUTHORITIES SHOULD HAVE THE RIGHT TO INSPECT INCOMING AND OUTGOING MAIL, BUT NEITHER SHOULD BE READ OR CENSORED. CASH, CHECKS, OR MONEY ORDERS SHOULD BE REMOVED FROM INCOMING MAIL AND CREDITED TO OFFENDERS' ACCOUNTS. IF CONTRABAND IS DISCOVERED IN EITHER INCOMING OR OUTGOING MAIL, IT MAY BE REMOVED. ONLY ILLEGAL ITEMS THAT THREATEN THE SECURITY OF THE INSTITUTION SHOULD BE CONSIDERED CONTRABAND.
 - c. OFFENDERS SHOULD RECEIVE A REASONABLE POSTAGE ALLOWANCE.
2. VISITS:
 - a. THE NUMBER OF VISITORS OR THE LENGTH OF SUCH VISITS SHOULD NOT BE LIMITED, EXCEPT IN ACCORDANCE WITH REGULAR INSTITUTIONAL SCHEDULES AND REQUIREMENTS.
 - b. CORRECTIONAL AUTHORITIES SHOULD FACILITATE AND PROMOTE VISITS.
3. MEDIA:
 - a. IN ORDER TO INCREASE PUBLIC UNDERSTANDING OF THE PROBLEMS FACED IN CORRECTIONAL INSTITUTIONS, THE MASS MEDIA SHOULD BE ENCOURAGED TO VISIT THEM. JOURNALISTS SHOULD

BE ADMITTED TO CORRECTIONAL INSTITUTIONS DURING ADMINISTRATIVE BUSINESS HOURS. THEY SHOULD BE ENCOURAGED TO CONTACT THE INSTITUTION IN ADVANCE TO MAKE NECESSARY ARRANGEMENTS. BY PRIOR ARRANGEMENT, ACCESS MAY BE PERMITTED DURING OTHER THAN BUSINESS HOURS.

- b. THE INSTITUTION HEAD MAY LIMIT THE NUMBER OF JOURNALISTS TO BE ADMITTED WHEN THERE ARE INSUFFICIENT PERSONNEL TO ASSIST THEM. FOR THEIR OWN SAFETY, MEMBERS OF THE MEDIA SHOULD BE ESCORTED WHILE IN THE INSTITUTION.
- c. THE INSTITUTIONAL HEAD SHOULD DRAW UP A PLAN FOR DEALING WITH THE MEDIA DURING EMERGENCY SITUATIONS, SUCH AS RIOTS. AS A MINIMUM, THE FOLLOWING ITEMS SHOULD BE INCLUDED:
 - (1) A ROOM SHOULD BE DESIGNATED FOR USE AS A PRESS ROOM DURING EMERGENCIES. IT SHOULD BE CLOSE TO THE ONE BEING USED BY THOSE MAKING DECISIONS DURING THE EMERGENCY. IF POSSIBLE, IT SHOULD INCLUDE THE BASIC NECESSITIES NEEDED BY REPORTERS: A TABLE, TYPEWRITERS, A TELEPHONE WITH A LINE DESIGNATED FOR THE MEDIA, AND FACILITIES FOR BRIEFING REPORTERS.
 - (2) WHEN PHYSICAL FACILITIES LIMIT THE NUMBER OF REPORTERS THEY SHOULD MAKE POOL COVERAGE DECISIONS.
 - (3) EACH REPORTER SHOULD SIGN A FORM RELEASING THE STATE FROM RESPONSIBILITY FOR INJURIES THEY MIGHT SUFFER WHILE COVERING THE EMERGENCY.
 - (4) THE INSTITUTION HEAD SHOULD KEEP MEDIA REPRESENTATIVES FULLY INFORMED THROUGH NEWS CONFERENCES ON THE SITUATION AND PLANS FOR DEALING WITH IT. BROADCAST NEWS PERSONNEL SHOULD BE CAUTIONED AGAINST LIVE BROADCASTS OR THE RELEASE OF INFORMATION WHICH MIGHT BE MONITORED BY RIOTERS WITH RADIOS.
 - (5) WHERE A CONFRONTATION IS ANTICIPATED, REPORTERS SHOULD BE BRIEFED ON THE DANGER THEY FACE AND WHERE THEY MIGHT BEST OBSERVE THE ACTION WITHOUT DISTRACTING THOSE INVOLVED OR BECOMING CAUGHT IN A CROSS FIRE.

IMPLEMENTATION

This standard should be implemented by all institutions of the Division of Corrections and by all jails in Montana.

CORRECTIONS ADVOCATE

TASK FORCE FINDINGS

There is a need in Montana for an office that's empowered to investigate legitimate complaints and grievances of offenders within the correctional system, including jails and institutions. Typically, offenders are powerless and have nowhere to turn for recourse when they have a complaint, and believe that the system has not properly resolved an issue. We believe that someone must be the advocate of the inmate to insure that the rights of offenders guaranteed in the state constitution and statutes are granted. Without an advocate in corrections, totally independent of the system, the rights of offenders may become lip service to an ideal that is ignored.

Fourteen States now have corrections ombudsmen (which is synonymous with advocate), and four of these are totally independent of the corrections system.¹ Minnesota has had an ombudsman program for three years and it has been so successful that the state Corrections Commissioner, Kenneth Shoen says, "I don't know how we operated without it."² To investigate fairly, the advocate must be totally independent from the corrections system, and yet be responsible to the public.

STANDARD 2.19

MONTANA SHOULD ESTABLISH THE OFFICE OF CORRECTIONS ADVOCATE, WHO SHALL BE CHARGED WITH THE DUTY OF HEARING, AND ACTING UPON WHEN NECESSARY, ALL COMPLAINTS AND GRIEVANCES OF PERSONS WITHIN MONTANA'S CORRECTIONAL SYSTEMS, INCLUDING INSTITUTIONS AND JAILS. THE ADVOCATE SHALL:

1. BE TOTALLY INDEPENDENT OF A CORRECTIONAL AUTHORITY.
2. HAVE GENERAL INVESTIGATORY POWERS THAT WILL ALLOW HIM ACCESS TO THE CORRECTIONAL INSTITUTIONS AND JAILS TO INTERVIEW COMPLAINTANTS AND WITNESSES AND TO PERFORM AN INVESTIGATION.
3. RENDER SATISFACTORY RESPONSES TO LEGITIMATE COMPLAINTS AND PROBLEMS, AND HAVE THE POWER TO MAKE RECOMMENDATIONS TO THE VARIOUS INSTITUTIONS AND JAILS FOR THE REDRESS OF THE INMATE'S GRIEVANCES THAT HE WARRANTS LEGITIMATE AND IN NEED OF ACTION.

IMPLEMENTATION

The Montana Legislature should immediately set up the advocate program to keep this office independent of corrections.

REFERENCE

1. Edgar May, "Prison Ombudsman In America," Corrections Magazine, January/February 1975, p. 46.
2. Ibid., p. 47.

Proposed Standard 10.12

Prior to construction of new correctional facilities or major modification of existing correctional facilities environmental, economic, and social impact studies should be made. The reports of these studies should be made available to the public. Qualified agencies or research organizations other than correctional authorities should conduct the studies.

BIBLIOGRAPHY

SELECTED BIBLIOGRAPHY

BOOKS

- Rudovsky, David. The Rights of Prisoners. New York: Hearst Corporation, 1973.
- Daniels, James. Vigilante Days and Ways. Portland: Binford and Mort.
- Frankel, Marvin E. Criminal Sentences: Law Without Order. New York: Hill and Wang, 1972.
- Goldfarb, Ronald L. and Singer, Linda R. After Conviction. New York: Simon and Schuster, 1973.
- Hamilton, James McClellan. History of Montana. Portland: Binford and Mort, 1970.
- Lavigne, Frank C. Crimes, Criminals and Detectives. Helena: State Publishing Company, 1924.
- Morris, Norval. The Future of Imprisonment. Chicago: The University of Chicago Press, 1974.
- Morris, Norval and Hawkins, Gordon. The Honest Politician's Guide to Crime Control. Chicago: The University of Chicago Press, 1970.
- Prassel, Frank Richard. The Western Peace Officer. Norman: University of Oklahoma Press, 1972.
- Toole, R. Russ. Montana, An Uncommon Land. Norman: University of Oklahoma Press, 1959.

NEWSPAPERS

- Barrett, Sharon. "Court Program Gives First Offenders Second Chances." Missoulian, December 31, 1975.
- Johnson, Charles S. "Fire Precautions Inadequate in Many of Montana's Jails." Helena Independent Record, June 15, 1975.
- Owen, Bill. "Prison Was Profitable Business for Early - Day Montana Entrepreneurs." Helena Independent Record, March 2, 1975.

REPORTS

- Logan, Robert. State of Montana Jail Survey, 1971.
- McCauley, Roland and Madison, Michael E. Corrections, 1973.
- Montana Board of Crime Control. Consumer Survey, 1975.
- Montana Board of Crime Control. Montana 1974 Arrests and Offenses.
- Montana's Conference on Corrections. Corrections, 1973.
- National Advisory Commission on Criminal Justice Standards and Goals. Corrections, Courts and the Criminal Justice System. Washington, D.C.: Government Printing Office, 1973.
- South Carolina Department of Corrections. The Emergency Rights of the Confined. Columbia, South Carolina: State Printing Company, 1972.
- South Carolina Department of Corrections. Inmate Grievance Procedures. Columbia, South Carolina: State Printing Company, 1973.
- State Board of Pardons. Annual Report, Fiscal Years 1974 and 1975.
- Ohio State University Standards and Goals Comparison Project. Corrections, Vol. II. Columbus, Ohio: Ohio State University Press, 1974.

MISCELLANEOUS

- American Correctional Association. Manual of Correctional Standards, 1974.
- Eck, Laurence, McDonald, Ronald B. and Wheelis, James B. Montana Supreme Court Cross-Comparison Study of American Bar Association Standards with Montana Law and Practice, 1973.
- Korbakes, Chris A. "Criminal Sentencing, Should the Judge's 'Sound Discretion' Be Explained?" Judicature (November, 1975), 50-1.
- "MBCC Conducts Consumer Survey on Crime." Checkmate, May-June, 1975.

Montana Historical Library. Archives, Letterbook, Vol. II.

Montana State Prison. Montana Multi-Agency Correctional Facility and Program, May 26, 1971.

Montana State Prison. Rules and Guidelines for Inmates.
Revised Codes of Montana, 1947.

Rules and Regulations for the Government of the Montana State Prison, 1891.

